□ 1238

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

VOLUNTEER PILOT ORGANIZATION PROTECTION ACT OF 2004

The SPEAKER pro tempore. The pending business is the question of suspending the rules and passing the bill, H.R. 1084, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and pass the bill, H.R. 1084, as amended, on which the yeas and nays are ordered.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 385, nays 12, not voting 36, as follows:

[Roll No. 447]

YEAS—385

Abercrombie
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Baird
Baker
Baldwin
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Becerra
Bell
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blumenauer
Blunt
Boehner
Bonilla
Bono
Boozman
Boswell
Boucher
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Butterfield
Buyer
Calvert
Camp
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Carter
Case
Castle
Chabot
Chandler
Chocola
Clyburn
Coble
Cole
Collins
Cooper
Costello
Cox
Cramer
Crane
Crenshaw
Cubin
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
DeMint
Deutsch
Diaz-Balart, L.
Dicks
Dingell
Doggett
Dooley (CA)
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emanuel
Emerson
English
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Feeney
Ferguson
Filner
Flake
Foley
Forbes
Ford
Fossella
Frank (MA)
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Granger
Graves
Green (TX)
Green (WI)
Grijalva
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Hill
Hinojosa
Hobson
Hoekstra
Holden
Holt
Honda
Hooley (OR)
Hostettler
Hoyer
Hulshof
Hyde
Inslee
Isakson
Israel
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kildee
Kilpatrick
Kind
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kucinich
LaHood
Lampson
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lowey
Lucas (KY)
Lucas (OK)
Lynch
Majette
Maloney
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCotter
McCrery
McDermott
McGovern
McHugh
McIntyre
McKeon
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mollohan
Moore
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Napolitano
Neal (MA)
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Ose
Otter
Oxley
Pallone
Pascrell
Pastor
Payne
Pearce
Pelosi
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Renzi
Reyes
Reynolds
Rodriguez
Rogers (AL)
Rogers (MI)
Rohrabacher
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (WI)
Ryun (KS)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Saxton
Schakowsky
Schiff
Scott (GA)
Scott (VA)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stearns
Stenholm
Strickland
Stupak
Sullivan
Sweeney
Tancredo
Tanner
Tauscher
Taylor (MS)
Taylor (NC)
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Toomey
Turner (OH)
Turner (TX)
Udall (CO)
Udall (NM)
Upton
Van Hollen
Visclosky
Vitter
Walden (OR)
Walsh
Wamp
Watson
Watt
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NAYS—12

Hinchey
Lofgren
Manzullo
Markey
Nadler
Paul
Peterson (MN)
Ryan (OH)
Stark
Terry
Waters
Wexler

NOT VOTING—36

Ackerman
Bachus
Ballenger
Beauprez
Blackburn
Boehlert
Bonner
Cannon
Clay
Conyers
Crowley
Diaz-Balart, M.
Engel
Gephardt
Goss
Greenwood
Hastings (FL)
Hoeffel
Houghton
Hunter
Issa
Johnson, E. B.
Kennedy (RI)
Kleczka
Langevin
McInnis
Owens
Rogers (KY)
Ros-Lehtinen
Schrock
Serrano
Slaughter
Tauzin
Towns
Velázquez
Whitfield

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members are advised that there are 2 minutes remaining in this vote.

□ 1246

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. ISSA. Mr. Speaker, today, I missed two recorded votes. If I had been present for rollcall vote No. 445, I would have votes "yea." If I had been present for rollcall vote No. 447, I would have voted "yea."

LAWSUIT ABUSE REDUCTION ACT OF 2004

Mr. SENSENBRENNER. Mr. Speaker, pursuant to House Resolution 766, I call up the bill (H.R. 4571) to amend Rule 11 of the Federal Rules of Civil Procedure to improve attorney accountability, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 766, the bill is considered read for amendment.

The text of H.R. 4571 is as follows:

H.R. 4571

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Lawsuit Abuse Reduction Act of 2004''.

SEC. 2. ATTORNEY ACCOUNTABILITY.

Rule 11 of the Federal Rules of Civil Procedure is amended—

(1) in subdivision (c)—

(A) by amending the first sentence to read as follows: ''If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the attorney, law firm, or parties that have violated this subdivision or are responsible for the violation, an appropriate sanction, which may include an order to the other party or parties to pay for the reasonable expenses incurred as a direct result of the filing of the pleading, motion, or other paper, that is the subject of the violation, including a reasonable attorney's fee.'';

(B) in paragraph (1)(A)—

(i) by striking ''Rule 5'' and all that follows through ''corrected.'' and inserting ''Rule 5.''; and

(ii) by striking ''the court may award'' and inserting ''the court shall award''; and

(C) in paragraph (2), by striking ''shall be limited to what is sufficient'' and all that follows through the end of the paragraph (including subparagraphs (A) and (B)) and inserting ''shall be sufficient to deter repetition of such conduct or comparable conduct by others similarly situated, and to compensate the parties that were injured by such conduct. The sanction may consist of an order to pay to the party or parties the amount of the reasonable expenses incurred as a direct result of the filing of the pleading, motion, or other paper that is the subject of the violation, including a reasonable attorney's fee.''; and

(2) by striking subdivision (d).

SEC. 3. APPLICABILITY OF RULE 11 TO STATE CASES AFFECTING INTERSTATE COMMERCE.

In any civil action in State court, the court, upon motion, shall determine within 30 days after the filing of such motion whether the action affects interstate commerce. Such court shall make such determination based on an assessment of the costs to the interstate economy, including the loss of jobs, were the relief requested granted. If the court determines such action affects interstate commerce, the provisions of Rule 11 of the Federal Rules of Civil Procedure shall apply to such action.

SEC. 4. PREVENTION OF FORUM-SHOPPING.

(a) IN GENERAL.—Subject to subsection (b), a personal injury claim filed in State or Federal court may be filed only in the State and, within that State, in the county (or Federal district) in which—

(1) the person bringing the claim, including an estate in the case of a decedent and a parent or guardian in the case of a minor or incompetent—

(A) resides at the time of filing; or

(B) resided at the time of the alleged injury; or

(2) the alleged injury or circumstances giving rise to the personal injury claim allegedly occurred; or

(3) the defendant's principal place of business is located.

(b) DETERMINATION OF MOST APPROPRIATE FORUM.—If a person alleges that the injury or circumstances giving rise to the personal injury claim occurred in more than one county (or Federal district), the trial court shall determine which State and county (or Federal district) is the most appropriate forum for the claim. If the court determines that another forum would be the most appropriate forum for a claim, the court shall dismiss the claim. Any otherwise applicable statute of limitations shall be tolled beginning on the date the claim was filed and ending on the date the claim is dismissed under this subsection.

(c) DEFINITIONS.—In this section:

(1) The term ''personal injury claim''—

(A) means a civil action brought under State law by any person to recover for a person's personal injury, illness, disease, death, mental or emotional injury, risk of disease, or other injury, or the costs of medical monitoring or surveillance (to the extent such claims are recognized under State law), including any derivative action brought on behalf of any person on whose injury or risk of injury the action is based by any representative party, including a spouse, parent, child, or other relative of such person, a guardian, or an estate; and

(B) does not include a claim brought as a class action.

(2) The term ''person'' means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity, but not any governmental entity.

(3) The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and any other territory or possession of the United States.

(d) APPLICABILITY.—This section applies to any personal injury claim filed in Federal or State court on or after the date of the enactment of this Act.

SEC. 5. RULE OF CONSTRUCTION.

Nothing in section 3 or in the amendments made by section 2 shall be construed to bar or impede the assertion or development of new claims or remedies under Federal, State, or local civil rights law.

The SPEAKER pro tempore. The amendment printed in the bill is adopted.

The text of the amendment in the nature of a substitute is as follows:

H.R. 4571

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Lawsuit Abuse Reduction Act of 2004''.

SEC. 2. ATTORNEY ACCOUNTABILITY.

Rule 11 of the Federal Rules of Civil Procedure is amended—

(1) in subdivision (c)—

(A) by amending the first sentence to read as follows: ''If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the attorney, law firm, or parties that have violated this subdivision or are responsible for the violation, an appropriate sanction, which may include an order to the other party or parties to pay for the reasonable expenses incurred as a direct result of the filing of the pleading, motion, or other paper, that is the subject of the violation, including a reasonable attorney's fee.'';

(B) in paragraph (1)(A)—

(i) by striking ''Rule 5'' and all that follows through ''corrected.'' and inserting ''Rule 5.''; and

(ii) by striking ''the court may award'' and inserting ''the court shall award''; and

(C) in paragraph (2), by striking ''shall be limited to what is sufficient'' and all that follows through the end of the paragraph (including subparagraphs (A) and (B)) and inserting ''shall be sufficient to deter repetition of such conduct or comparable conduct by others similarly situated, and to compensate the parties that were injured by such conduct. The sanction may consist of an order to pay to the party or parties the amount of the reasonable expenses incurred as a direct result of the filing of the pleading, motion, or other paper that is the subject of the violation, including a reasonable attorney's fee.''; and

(2) by striking subdivision (d).

SEC. 3. APPLICABILITY OF RULE 11 TO STATE CASES AFFECTING INTERSTATE COMMERCE.

In any civil action in State court, the court, upon motion, shall determine within 30 days after the filing of such motion whether the action affects interstate commerce. Such court shall make such determination based on an assessment of the costs to the interstate economy, including the loss of jobs, were the relief requested granted. If the court determines such action affects interstate commerce, the provisions of Rule 11 of the Federal Rules of Civil Procedure shall apply to such action.

SEC. 4. PREVENTION OF FORUM-SHOPPING.

(a) IN GENERAL.—Subject to subsection (b), a personal injury claim filed in State or Federal court may be filed only in the State and, within that State, in the county (or Federal district) in which—

(1) the person bringing the claim, including an estate in the case of a decedent and a parent or guardian in the case of a minor or incompetent—

(A) resides at the time of filing; or

(B) resided at the time of the alleged injury; or

(2) the alleged injury or circumstances giving rise to the personal injury claim allegedly occurred; or

(3) the defendant's principal place of business is located.

(b) DETERMINATION OF MOST APPROPRIATE FORUM.—If a person alleges that the injury or circumstances giving rise to the personal injury claim occurred in more than one county (or Federal district), the trial court shall determine which State and county (or Federal district) is the most appropriate forum for the claim. If the court determines that another forum would be the most appropriate forum for a claim, the court shall dismiss the claim. Any otherwise applicable statute of limitations shall be tolled beginning on the date the claim was filed and ending on the date the claim is dismissed under this subsection.

(c) DEFINITIONS.—In this section:

(1) The term ''personal injury claim''—

(A) means a civil action brought under State law by any person to recover for a person's personal injury, illness, disease, death, mental or emotional injury, risk of disease, or other injury, or the costs of medical monitoring or surveillance (to the extent such claims are recognized under State law), including any derivative action brought on behalf of any person on whose injury or risk of injury the action is based by any representative party, including a spouse, parent, child, or other relative of such person, a guardian, or an estate; and

(B) does not include a claim brought as a class action.

(2) The term ''person'' means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity, but not any governmental entity.

(3) The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and any other territory or possession of the United States.

(d) APPLICABILITY.—This section applies to any personal injury claim filed in Federal or State court on or after the date of the enactment of this Act.

SEC. 5. RULE OF CONSTRUCTION.

Nothing in section 3 or in the amendments made by section 2 shall be construed to bar or impede the assertion or development of new claims or remedies under Federal, State, or local civil rights law.

SEC. 6. THREE-STRIKES RULE FOR SUSPENDING ATTORNEYS WHO COMMIT MULTIPLE RULE 11 VIOLATIONS.

(a) MANDATORY SUSPENSION.—Whenever a Federal district court determines that an attorney has violated Rule 11 of the Federal Rules of Civil Procedure, the court shall determine the number of times that the attorney has violated that rule in that Federal district court during that attorney's career. If the court determines that the number is 3 or more, the Federal district court—

(1) shall suspend that attorney from the practice of law in that Federal district court for 1 year; and

(2) may suspend that attorney from the practice of law in that Federal district court for any additional period that the court considers appropriate.

(b) APPEAL; STAY.—An attorney has the right to appeal a suspension under subsection (a). While such an appeal is pending, the suspension shall be stayed.

(c) REINSTATEMENT.—To be reinstated to the practice of law in a Federal district court after completion of a suspension under subsection (a), the attorney must first petition the court for reinstatement under such procedures and conditions as the court may prescribe.

SEC. 7. ENHANCED SANCTIONS FOR DOCUMENT DESTRUCTION.

(a) IN GENERAL.—Whoever willfully and intentionally influences, obstructs, or impedes, or attempts to influence, obstruct, or impede, a pending court proceeding through the willful and intentional destruction of documents sought in, and highly relevant to, that proceeding shall be punished with mandatory civil sanctions of a degree commensurate with the civil sanctions available under Rule 37 of the Federal Rules of Civil Procedure, in addition to any other civil sanctions that otherwise apply.

(b) APPLICABILITY.—This section applies to any court proceeding in any Federal or State court.

The SPEAKER pro tempore. After one hour of debate on the bill, as

amended, it shall be in order to consider the further amendment printed in House Report 108–684, if offered by the gentleman from Texas (Mr. TURNER), or his designee, which shall be considered read, and shall be debatable for 40 minutes, equally divided and controlled by the proponent and an opponent.

□ 1245

The gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Virginia (Mr. SCOTT) each will control 30 minutes of debate on the bill.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, recently President Bush said, ''We must protect small business owners and workers from the explosion of frivolous lawsuits that threaten jobs across America.'' Even Senator KERRY claims to support national legislation in which ''lawyers who file frivolous cases would face tough, mandatory sanctions, including a 'three strikes and you're out' provision that forbids lawyers who file three frivolous cases from bringing another suit for the next 10 years.'' Well, help is on the way.

H.R. 4571, the Lawsuit Abuse Reduction Act, would restore mandatory sanctions and monetary penalties under Federal rule 11 of the Federal Rules of Civil Procedure for filing frivolous lawsuits and abusing the litigation process. It would also extend these same protections to cover State cases that a State judge determines to have interstate effects, and it would prevent forum shopping by requiring personal injury cases to be brought only where the plaintiff lives or was allegedly injured, or where the defendant's principal place of business is located.

H.R. 4571 will also apply a ''three strikes and you're out'' rule to attorneys who commit multiple rule 11 violations in Federal district court and impose mandatory civil sanctions for willful and intentional document destruction intended to obstruct the pending court proceeding. The bill would apply to lawsuits brought by individuals as well as businesses, and it expressly precludes the application of the bill to civil rights cases if applying the bill to such cases would bar or impede the assertion or development of new claims or remedies under Federal, State, or local civil rights law.

Today, frivolous lawsuits are legalized extortion. Without the threat of certain punishment for filing frivolous lawsuits, innocent people and small businesses will continue to face the harsh economic reality that simply paying off frivolous claims through monetary settlements is always cheaper than litigating the case until no fault is found.

No part of American society rests easy in a legal culture of fear. Churches are discouraging counseling by ministers. Children have learned to threaten teachers with lawsuits. Youth sports are shutting down in the face of lawsuits for injury or even hurt feelings. Monkey bars and other once-common equipment are now endangered species at playgrounds. As a result, children stay at home and get fat, and their parents sue the restaurants that serve them. The Girl Scouts in metro Detroit alone have to sell 36,000 boxes of cookies each year just to pay for liability insurance, 36,000 boxes of cookies.

Good Samaritans are told to hit the road. When one man routinely cleared a trail after snowstorms, the county had to ask him to stop. The supervisor of district operations wrote, ''If a person falls, you are more liable than if you had never plowed at all. Crazy world. Unfortunately, the times we are in allow for a much more litigious environment than common sense would dictate.''

Because existing rules against frivolous lawsuits are ineffective, the right to sue has not only been exploited by lawyers; it has been turned into one of the most destructive business models in the American economy. Today, personal injury lawyers can gamble on taking cases on a contingency-fee basis because they only need to win one in 10 to score the big judgment that would make up for the losses in other cases. We all live with the consequences, including higher taxes and insurance rates; chaos in our schools; doctors going out of business, limiting Americans' access to health care.

Small businesses and workers may suffer the most. The Nation's oldest ladder manufacturer, the family-owned John S. Tilley Ladders Company near Albany, New York, recently filed for bankruptcy protection and sold off most of its assets due to litigation costs. Founded in 1855, the Tilley firm could not handle the cost of liability insurance, which had risen from 6 percent of sales a decade ago to 29 percent, even though the company had never lost an actual court judgment.

Sadly, the Federal rule designed to deter frivolous lawsuits was gutted over 10 years ago; and today, we live with the results. Shockingly, rule 11 of the Federal Rules of Civil Procedure does not require sanctions or even allow monetary penalties against parties who bring frivolous lawsuits. Without certain punishment for those who bring frivolous lawsuits, and the threat of monetary penalties to compensate the victims of frivolous lawsuits, there is little incentive for lawsuit victims to spend time and money seeking sanctions for lawsuit abuse.

Rule 11 also does not allow sanctions for the abuses of the discovery process. Rule 11 as currently written even allows lawyers to avoid sanctions entirely from making frivolous claims by withdrawing them within 3 weeks. Such a rule actually encourages frivolous lawsuits because personal injury attorneys can file harassing pleadings, secure in the knowledge that they have nothing to lose. If someone objects, they can simply retreat without penalty. H.R. 4571 closes all of these loopholes.

Forum shopping further encourages frivolous litigation. Lax rules regarding where a lawsuit can be brought have turned certain parts of the country into lawsuit factories, the only factories that lose jobs rather than creating them. One of the Nation's wealthiest personal injury attorneys described what he calls ''magic jurisdictions'' as follows: ''What I call the 'magic jurisdiction' is where the judiciary is elected with verdict money. The trial lawyers have established relationships with the judges that are elected. It's almost impossible to get a fair trial if you're a defendant in some of these places. Any lawyer fresh out of law school can walk in there and win the case, so it doesn't matter what the evidence or law is.'' H.R. 4571 would prevent the unfair practice of forum shopping that currently allows personal injury lawyers to sue wherever the most favorable court is.

Congress cannot sit back and allow the personal injury lawyers to bankrupt the very concept of personal responsibility that has made America great. I urge my colleagues to support this bipartisan legislation that will protect both America's values and its vital small businesses.

Mr. Speaker, I reserve the balance of my time.

Mr. SCOTT of Virginia. Mr. Speaker, I yield myself such time as I may consume, and I rise to speak against the bill

Mr. Speaker, I do not support the legislation because it will have a significant adverse effect on the ability of unpopular plaintiffs to seek recourse in our courts, and it will operate to benefit foreign corporate defendants at the expense of domestic counterparts and will skew the playing field against injured victims.

Now, a lot of organizations oppose the bill, and I would like to read from a letter from the Judicial Conference of the United States, the Chief Justice of the United States presiding, in a letter to the committee chairman.

It says that ''section 2 of the bill would reinstitute a rule eliminated in 1993 upon the recommendation of the Judicial Conference, approved by the Supreme Court, and after review by Congress, because of the serious problems it engendered during a 10-year period of operation. Section 2 also would amend rule 11 of the Federal Rules of Civil Procedure in a manner consistent with the longstanding Judicial Conference policy opposing direct amendment of the Federal rules by legislation.''

The letter goes on to say that the bill ''would directly amend civil rule 11 to remove a court's discretion to impose sanctions on a frivolous filing and eliminate the rule's 'safe-harbor' provisions. The bill undoes amendments to rule 11 that took effect on December 1, 1993, and would bring back the provisions that were first introduced in 1983

and removed from the rule in 1993, after a decade of signally bad experiences with the operation and effects of the 1983 rule.''

The Judicial Conference of the United States goes on to state: ''Like H.R. 4571, the 1983 version of rule 11 required sanctions for every violation of the rule. It spawned thousands of court decisions and generated widespread criticism. The rule was abused by resourceful lawyers, and an entire 'cottage industry' developed that churned tremendously wasteful satellite litigation that had everything to do with strategic gamesmanship and little to do with underlying claims. Rule 11 motions came to be met with countermotions that sought rule 11 sanctions for making the original rule 11 motion.

''Some of the serious problems caused by the 1983 amendments to rule 11 included:

''Creating a significant incentive to file unmeritorious rule 11 motions by providing a possibility of monetary penalty.''

It goes on to cite other problems that occurred that were cured in 1993. The letter goes on: ''The 1993 amendments to rule 11 were designed to strike a fair and equitable balance between competing interests, remedy the major problems with the rule, and allow courts to focus on the merits of the underlying cases rather than on rule 11 motions.''

It goes on to say that the ''experience with the amended rule since 1993 has demonstrated a marked decline in rule 11 satellite litigation without any noticeable increase in the number of frivolous filings. In June 1995, the Federal Judicial Center conducted a survey of 1,130 lawyers and 148 judges on the effects of the 1993 rule 11 amendments . . . The Center found general satisfaction with the amended rule. It also found that more than 75 percent of the judges and lawyers would oppose a provision that would require a court to impose a sanction when the rule is violated. A majority of the judges and lawyers, both plaintiffs' and defendants' lawyers, believed that groundless litigation was handled effectively by judges.

''Undoing the 1993 rule 11 amendments, even though no serious problem has been brought to the Judicial Conference rules committee's attention, would frustrate the purpose and intent of the Rules Enabling Act.''

It goes on to criticize the provisions in section 3, the mandatory application to State laws, and section 4, the provision on forum shopping.

Mr. Speaker, in addition to the Judicial Conference, other organizations oppose the legislation. The NAACP, the Public Citizen, the Alliance for Justice, People for the American Way, the American Association of People with Disabilities, the Lawyers' Committee for Civil Rights Under Law, the American Bar Association, the National Conference of State Legislatures, National Partnership for Women, National Women's Law Center, the Center for Justice and Democracy, Consumers Union, National Association of Consumer Advocates, USAction, U.S. PIRG, and the NAACP Legal Defense Fund all oppose the legislation.

Mr. Speaker, one of the additional problems with the bill is the chilling effect it may have on bringing important, legitimate, unpopular actions. This is due to the fact that much of the impetus of the 1993 changes stemmed from abuses by defendants in civil rights cases, namely, that civil rights defendants were choosing to harass civil rights plaintiffs by filing a series of rule 11 motions intended to slow down and impede meritorious cases.

Although the bill states that the proposed rule 11 changes shall not be construed to ''bar or impede the assertion of new claims or remedies under Federal, State or local civil rights law,'' the language does not clearly and simply exempt civil rights and discrimination cases under current law, as should be the case. Determining what a new claim or remedy might be would just add to the litigation.

Certainly, it does not cover the fact that this bill and rule 11 do not offer an attorney the ability to appeal a rule 11 sanction. History has demonstrated that civil rights lawsuits are often extremely unpopular, particularly in certain parts of the country where some judges almost automatically consider civil rights cases as frivolous. In such courts, plaintiffs' attorneys could be unreasonably subject to sanctions, even suspensions, without appeal contrary to the purpose of rule 11.

□ 1300

Mr. Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield 6 minutes to the gentleman from Texas (Mr. SMITH).

Mr. SMITH of Texas. Mr. Speaker, I thank the gentleman from Wisconsin (Mr. SENSENBRENNER), the chairman of the Committee on the Judiciary, for yielding me this time.

Mr. Speaker, frivolous lawsuits bankrupt individuals, ruin reputations, drive up insurance premiums, increase health care costs, and put a drag on the economy. Frivolous lawsuits are brought, for example, where there is no evidence that shows negligence on the part of the defendant. These nuisance lawsuits make a mockery of our legal system.

Of course, many Americans have legitimate legal grievances, from someone wrongly disfigured during an operation to a company responsible for contaminating a community's water supply. No one who deserves justice should be denied justice. However, gaming of a system by a few lawyers drives up the cost of doing business and drives down the integrity of the judicial system.

Let me give some examples. The Chief Executive Officer of San Antonio's Methodist Children's Hospital was sued after he stepped into a patient's hospital room and asked how he was doing. Of course, a jury cleared him of any wrongdoing.

A Pennsylvania man sued the Frito-Lay company, claiming that Doritos chips were ''inherently dangerous'' after one stuck in his throat. After 8 years of costly litigation, the Pennsylvania Supreme Court threw out the case, writing that there is ''a common sense notion that it is necessary to properly chew hard foodstuffs prior to swallowing.''

In a New Jersey Little League game, a player lost sight of a fly ball because of the sun. He was injured when the ball struck him in the eye. The coach was forced to hire a lawyer after the boy's parents sued. The coach settled the case for $25,000.

Today, almost any party can bring any suit in almost any jurisdiction. That is because plaintiffs and their attorneys simply have nothing to lose. All they want is for the defendant to settle. This is legalized extortion. It is lawsuit lottery.

Some lawyers file lawsuits for reasons that can only be described as absurd. They sue a theme park because its haunted houses are too scary. They sue the Weather Channel for an inaccurate forecast. And they sue McDonald's, claiming a hot pickle dropped from a hamburger caused a burn and mental jury.

Defendants, on the other hand, can unfairly lose their careers, their businesses and their reputations. In short, they can lose everything. This is not justice, and there is a remedy. The Lawsuit Abuse Reduction Act.

Mr. Speaker, this applies to both plaintiffs who file frivolous lawsuits merely to extort financial settlements and to defendants who unnecessarily prolong the legal process. If the judge determines a claim is frivolous, then they can order that person to pay the attorney's fees of the party who is the victim of their frivolous claim. This will make a lawyer think twice before he or she brings a lawsuit.

In addition, this legislation prevents forum shopping. It requires that personal injury claims be filed only where the plaintiff resides, where the injury occurred, or where the defendant's principal place of business is located. This provision addresses the growing problem of attorneys who shop around the country for judges who routinely award excessive amounts.

One of the Nation's wealthiest trial lawyers, Dickie Scruggs, has told us exactly how this abuse occurs, and the chairman of the Committee on the Judiciary used this example a while ago, but, quite frankly, it is just too good not to repeat.

Here is what one of the king of torts says about forum shopping: ''What I call 'the magic jurisdiction.' It's where the judiciary is elected with verdict money, the trial lawyers have established relationships with the judges that are elected; they've got large populations of voters who are in on the

deal, they're getting their piece in many cases. It's almost impossible to get a fair trial if you're a defendant in some of these places. Any lawyer fresh out of law school can walk in there and win the case, so it doesn't matter what the evidence or law is.''

Mr. Speaker, I do not know how anyone can justify the continuation of this kind of abuse. One of these magic jurisdictions where trial lawyers flock is in my home State of Texas in Jefferson County. The Austin American Statesman noted that trial lawyers claim this is where ''juries pass down sizable judgments.'' Soaring medical liability insurance rates have followed, which has caused doctors to flee the area.

Mr. Speaker, forum shopping is a part of lawsuit abuses and we must pass legislation to stop it from occurring. The following organizations support H.R. 4571: American Tort Reform Association, National Association of Home Builders, National Association of Manufacturers, National Restaurant Association, National Federation of Independent Business, American Insurance Association, and the U.S. Chamber of Commerce.

Also, I might add, both Republican and Democratic presidential and vice presidential candidates are on record as wanting to stop frivolous lawsuits. So the Lawsuit Abuse Reduction Act is sensible reform that will help restore confidence to America's justice system.

Mr. Speaker, I want to add one point and address a concern that was raised by my friend from Virginia and that had to do with a letter he raised from the Judicial Conference. Well, the Judicial Conference does not exactly enhance their credibility when they take a position contrary to the judges that they purport to represent. And, in fact, in surveys taken by the Judicial Conference before the rule was changed in 1993, it found that 80 percent of the judges favored the rule that we seek to go back to. After the rule was changed and weakened, which we opposed, they took another survey and found a majority of judges, in fact almost a majority of trial lawyers, liked the original rule that we seek to go back to in this legislation.

So, Mr. Speaker, I urge my colleagues to support this bill.

Mr. SCOTT of Virginia. Mr. Speaker, I yield myself such time as I may consume to comment that the letter from the Judicial Conference of the United States outlining the survey results, showed a majority of judges, lawyers, both plaintiffs and defense lawyers, believed that groundless litigation was handled effectively by the judges and preferred the 1993 amendment.

Mr. Speaker, I submit herewith the letter from the Judicial Conference for the RECORD.

JUDICIAL CONFERENCE OF
THE UNITED STATES,
Washington, DC, July 9, 2004.

Hon. F. JAMES SENSENBRENNER, Jr.,
Chairman, Committee on the Judiciary, House of Representatives, 2138 Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: On behalf of the Judicial Conference, I write to urge you to reconsider your position on the ''Lawsuit Abuse Reduction Act of 2004'' (H.R. 4571). [Section 2 of the bill would reinstitute a rule eliminated in 1993 upon the recommendation of the Judicial Conference, approval by the Supreme Court, and after review by Congress, because of the serious problems it engendered during a ten-year period of operation. Section 2 also would amend Rule 11 of the Federal Rules of Civil Procedure in a manner inconsistent with the longstanding Judicial Conference [policy opposing direct amendment of the federal rules by legislation.] Section 3 of H.R. 4571 would apply the revised federal Rule 11 to certain state court actions, while section 4 would amend the venue standards governing the filing of tort actions in both the federal and state courts: Sections 3 and 4 implicate federal-state comity interests and raise important policy and practical concerns.

SECTION 2

[Section 2 would directly amend Civil Rule 11 to remove a court's discretion to impose sanctions on a frivolous filing and eliminate the rule's ''safe-harbor'' provisions. The bill undoes amendments to Rule 11 that took effect on December 1, 1993, and would bring back the provisions that were first introduced in 1983 and removed from the rule in 1993, after a decade of signally bad experiences with the operation and effects of the 1983 rule.

Like H.R. 4571, the 1983 version of Rule 11 required sanctions for every violation of the rule. It spawned thousands of court decisions and generated widespread criticism. The rule was abused by resourceful lawyers, and an entire ''cottage industry'' developed that churned tremendously wasteful satellite litigation that had everything to do with strategic gamesmanship and little to do with underlying claims. Rule 11 motions came to be met with counter motions that sought Rule 11 sanctions for making the original Rule 11 motion.

[Some of the other serious problems caused by the 1983 amendments to Rule 11 included:

(1) Creating a significant incentive to file unmeritorious Rule 11 motions by providing a possibility of monetary penalty;

(2) engendering potential conflict of interest between clients and their lawyers, who advised withdrawal of particular claims despite the clients' preference;

(3) exacerbating tensions between lawyers; and

(4) providing little incentive, and perhaps a distinctive disincentive, to abandon or withdraw a pleading or claim—and thereby admit error—that lacked merit after determining that it no longer was supportable in law or fact.

The 1993 amendments to Rule 11 were designed to strike a fair and equitable balance between competing interests, remedy the major problems with the rule, and allow courts to focus on the merits of the underlying cases rather than on Rule 11 motions. The rule establishes a safe harbor, providing a party 21 days within which to withdraw a particular claim or defense before sanctions can be imposed. If the party fails to withdraw an allegedly frivolous claim or defense within the 21 days, a court may impose sanctions, including assessing reasonable attorney fees.] The 1983 Rule 11 authorized a court to sanction discovery-related abuse under Rule 11, Rule 26(g), or Rule 37, which created confusion. Under the 1993 amendments to Rule 11, sanctioning of discovery-related abuse was limited to Rules 26 and 37, which provide for sanctions that include awards for reasonable attorney fees.

The 1993 amendments to Rule 11 culminated a long, critical examination of the rule begun four years earlier. The Advisory Committee on Civil Rules (Advisory Committee) reviewed a significant number of empirical examinations of the 1983 Rule 11, including three separate studies conducted by the Federal Judicial Center in 1985, 1988, and 1991, a Third Circuit Task Force report on Rule 11 in 1989, and a New York State Bar Committee report in 1987. The Advisory Committee took note of several book-length analyses of Rule 11 case law.

The 1991 Federal Judicial Center survey noted that most federal judges believed that the 1983 version of Rule 11 had positive effects. But the study also noted that most judges found several other methods more effective than Rule 11 in handling such litigation and, most significantly, that about one-half of the judges reported that Rule 11 exacerbates behavior between counsel. After reviewing the literature and empirical studies of problems caused by the 1983 amendments to Rule 11, the Advisory Committee issued in 1990 a preliminary call for general comment on the operation and effect of the rule. The response was substantial, calling for a change in the rule.

The Advisory Committee concluded that the cost-shifting in Rule 11 created an incentive for too many unnecessary Rule 11 motions. Amendments to Rule 11 were drafted. The Supreme Court promulgated and transmitted the amendments to Congress in May 1993 after extensive scrutiny and debate by the bench, bar, and public in accordance with the Rules Enabling Act process (28 U.S.C. §§ 2071–2077).

[Experience with the amended rule since 1993 has demonstrated a marked decline in Rule 11 satellite litigation without any noticeable increase in the number of frivolous filings. In June 1995, the Federal Judicial Center conducted a survey of 1,130 lawyers and 148 judges on the effects of the 1993 Rule 11 amendments. About 580 attorneys and 120 judges responded to the survey. The Center found general satisfaction with the amended rule. It also found that more than 75 percent of the judges and lawyers would oppose a provision that would require a court to impose a sanction when the rule is violated. A majority of the judges and lawyers, both plaintiffs' and defendants' lawyers, believed that groundless litigation was handled effectively by judges.

Undoing the 1993 Rule 11 amendments, even though no serious problem has been brought to the Judicial Conference rules committees' attention, would frustrate the purpose and intent of the Rules Enabling Act. Section 2 of H.R. 4571 would effectively reinstate the 1983 version of Rule 11 that proved so contentious and wasted so much time and energy of the bar and bench. Section 2, indeed, in some ways seems to go beyond the provisions that created serious problems with the 1983 rule. It may cause even greater mischief. Rule 11 in its present form has proven effective and should not be revised.]

SECTIONS 3 AND 4

[Section 3 would extend the new requirements of a mandatory Rule 11 to all state court litigation that the state court deems, on motion, to affect interstate commerce.] Two features of this provision stand out. First, it would directly regulate the practice and procedure of state courts, mandating a federal standard for the imposition of sanctions for the filing of frivolous or

ungrounded complaints and other papers in state court. At present, states have been free to adopt their own rules of practice, including a version of Rule 11, if a state so chooses. Second, section 3 does not specify the actions to which it would apply. Rather, it imposes on state judges a broad generalized test to determine whether or not federal Rule 11 would apply in a given case. If enacted, this section could affect the cost and duration of a very large number of civil actions in state courts.

[Section 4 seeks to prevent forum shopping by specifying the places where a plaintiff may bring a ''personal injury'' claim by imposing a federal standard for determining the venue of state law personal injury claims, in both state and federal court. Such a federal standard would displace existing state venue rules or statutes.] It would also significantly alter the statutes in title 28, United States Code, that now govern venue (section 1391) and transfer of venue (section 1404) in the federal courts.

The Judicial Conference opposes the enactment of H.R. 4571 for the reasons stated above as to section 2. Sections 3 and 4 would make important changes in the administration of civil justice in both federal and state courts. The Judicial Conference has not had the opportunity to formally assess the advisability or impact of these sections, but notes that they may substantially affect federal-state comity interests and raise important policy and practical concerns.

The Judicial Conference greatly appreciates your consideration of its views: If you or your staff have any questions, please contact Michael W. Blommer, Assistant Director, Office of Legislative Affairs, Administrative Office of the U.S. Courts, at (202) 502–1700.

Sincerely,

LEONIDAS RALPH MECHAM,

Secretary.

Mr. SCOTT of Virginia. Mr. Speaker, I yield 4 minutes to the gentleman from California (Mr. BERMAN).

(Mr. BERMAN asked and was given permission to revise and extend his remarks.)

Mr. BERMAN. Mr. Speaker, I wonder if the majority ever steps back for a second and looks at the situation that they are in. They run around asking the Committee on the Judiciary in the House to pass legislation stripping Federal courts of jurisdiction, including the U.S. Supreme Court of jurisdiction, to decide fundamental constitutional questions presented under the U.S. Constitution, and at the same time they run around asking the Committee on the Judiciary of the House and the House of Representatives to pass bills writing the venue laws for personal injury actions brought in State court.

This is Federal intrusion in areas traditionally reserved for the States and an effort to reverse everything that Marbury v. Madison and all of its subsequent cases have said with respect to the Federal Judiciary's role in dealing with questions arising under the Constitution.

My friend, the very able chairman of the Committee on the Judiciary, says on the question of frivolous lawsuits, help is on the way. But the truth is, help is not on the way for those who are looking for it. The germ of a good idea, mandatory sanctions for filing of frivolous pleadings or frivolous motions, improved by an amendment by the gentleman from Florida (Mr. KELLER), to say that where an attorney is responsible for three such frivolous filings he is subject to suspension, that to be reviewed by an appellate court so that there are real teeth and deterrence to the filing of frivolous lawsuits, is combined with an overreaching, egregious effort to exchange the venue laws of 50 State legislatures and the courts of those States with respect to personal injury actions, any of which could be corrected by those State legislatures on their own in matters having no serious Federal interest.

Once again, the Republican majority, as it has done consistently for the past 10 years in the area of tort reform, overreaches. It takes a good idea, adds so many outrageous and overreaching provisions to that good idea that the other House ignores it.

Let us go back and look at a little history. In 1994, the Republicans came down with their Contract For America, and one of them was tort reform. I will give a classic example. In the committee they eliminate joint and several liability. There are arguments for it and there are arguments against it. Either the plaintiff who is not able to recover and made whole is hurt, or some defendant is potentially liable for the entire judgment, even though he is only partially responsible.

In the Committee on Rules two amendments are offered; one to take care of the minor tort feasers, the people who are involved in a relatively small amount of the negligent conduct that produced the injury; and the other one to wipe out that rule. The Republican majority, fearful that the compromise proposal might pass the House, does not allow the rule for that amendment to go through and, instead, allows the one to simply reinstate the existing law.

In that bill, which of course never passed the Senate, in the medical malpractice legislation, where they resisted any effort to make the caps on pain and suffering relevant to today's costs and today's times and the current situation, whether it is on class action lawsuits, where they sought to suck up all State actions without any balance, they have consistently overreached. And the result, as they are doing with this bill, of overreaching is that we lose a chance to make some improvement in the present system to deal effectively, in this case with frivolous lawsuits, because they want everything or they want the issue, and end up with nothing.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio (Mr. CHABOT).

Mr. CHABOT. Mr. Speaker, I thank the gentleman for yielding me this time.

Over the past decade, our Nation has witnessed an explosion of civil lawsuits. Large jury awards and settlements have produced an ever-growing number of actions in Federal and State courts, costing the American people more than $200 billion each year and really drastically reshaping our civil justice system.

Tort liability was developed to hold responsible those parties who injure or harm others through actions determined to be negligent or reckless or careless. However, civil actions are increasingly being used to harass and threaten and manipulate innocent parties, undermining the credibility and traditional notions of justice in this country.

In 1993, Rule 11 of the Federal Rules of Civil Procedure, the Federal safeguard against Federal lawsuits, was weakened, thereby making frivolous claims easier to file. Those changes to Rule 11 provided judges with more leeway to avoid sanctioning attorneys who filed meritless claims.

For example, the rule changes allowed trial attorneys a 21-day ''safe-harbor period'' to correct or withdraw meritless claims without fear of penalty, often at the expense of innocent defendants.

While a number of initiatives have been introduced in Congress to reform specific aspects of the tort system, such as medical malpractice reform, small business reform, and product liability reform, or the 18-year Statute of Repose, the legislation that is being offered on the floor today seeks to reduce frivolous lawsuits on a broader scale.

Restoring Rule 11, with its intended authority and expanding its applicability, the Lawsuit Abuse Reduction Act will put teeth back into the safeguard against frivolous claims. This legislation will remove the safe-harbor provision I mentioned before, it would authorize judges to impose sanctions, including monetary, against attorneys and parties who file meritless claims, it would extend sanctions to discovery, and it would extend Rule 11 claims that affect interstate commerce.

Mr. Speaker, I would strongly urge my colleagues to support this legislation.

Mr. SCOTT of Virginia. Mr. Speaker, I yield 4 minutes to the gentleman from North Carolina (Mr. WATT).

Mr. WATT. Mr. Speaker, I thank the gentleman for yielding me this time.

Let me first agree with my colleagues on both sides of the aisle that I do not think anybody really likes frivolous litigation, and this bill provides an opportunity for people to get up and say that. I think if we were to ask either the Republican or the Democratic nominees for President and Vice President that are out there running, all of them will say, no, I do not like frivolous litigation.

The problem here is that my colleagues just do not want to be confused by the facts, because this bill is going to do more to encourage frivolous litigation, potentially, than it is going to do to discourage frivolous litigation. The Judicial Conference of the United States has made that clear in the letter that has been introduced into the

RECORD in which they say that the provisions of this bill, which go back to the rules that were in effect prior to 1983, those rules were changed because they spawned a whole cottage industry of litigation related to frivolous lawsuits.

□ 1315

So even if this were going to discourage frivolous lawsuits, which they say it would not, you are going to engender a whole new set of problems because what they say happened was Rule 11 motions came to be met with countermotions that sought Rule 11 sanctions for making the original Rule 11 motion. What sense does that make that we would set up a system to encourage people to file countermotions against each other claiming that the other side was frivolous in what they were doing in the lawsuit?

The Judicial Conference is clear that this bill would provide incentives to encourage litigants to keep a frivolous claim in court because if they ever withdrew the frivolous claim, it in effect would be a concession that it was frivolous. So somebody files a lawsuit, realizes they have a bad claim, then has no way of getting out of it because they are afraid to withdraw the claim because somebody is going to hit them with sanctions, and the fact that they withdrew the claim is an admission that it was a frivolous claim. It is going to set up situations where lawyers are put in conflicts of interest with their clients because the client wants to pursue a claim that may be frivolous, the lawyer does not want to pursue it, realizes that the claim is frivolous and cannot back out of it without getting into a conflict of interest with their client. All of that is outlined in the letter from the Judicial Conference.

This is not really about doing something that is going to discourage frivolous lawsuits, this bill is going to encourage frivolous lawsuits and encourage pursuit of frivolous lawsuits in a way that the Judicial Conference has outlined clearly.

There seems to be this mentality, I hate frivolous lawsuits and do not confuse me with the facts because that is not what I am interested in. We should vote this bill down and keep the rules in place that are there that allow judges to make reasonable decisions in their courts.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, the Judicial Conference has amnesia and they did not look back into the history of what happened between 1983 and 1993 when the rules that this bill proposes were in place.

In 1991, the Judicial Conference Advisory Committee on Civil Rule did a survey and reviewed Rule 11. At that time 751 Federal judges found that an overwhelming majority of them, 95 percent, believed Rule 11 did not impede development of the law; 72 percent believed that the benefits of the rule outweighed any additional requirement of judicial time; 81 percent believed that the 1983 version of Rule 11 had a positive effect on litigation in the Federal courts; and 80 percent believed that the rule should be retained in its then-current form. That is what the judges who were on the bench at the time this rule was in effect said.

The Judicial Conference ought to spend their time looking back at their own records and their own surveys rather than sending these types of letters advising us that what we are doing here is no good.

Mr. Speaker, I yield 2½ minutes to the gentleman from Florida (Mr. KELLER).

Mr. KELLER. Mr. Speaker, I rise today in strong support of the Lawsuit Abuse Reduction Act of 2004. The overriding central purpose of this legislation is to prevent frivolous lawsuits from being filed in the first place. To achieve this, we provide for tough, mandatory sanctions, including a three strikes and you are out penalty, which I authored.

Now should Members vote for this legislation? To determine that answer, may I suggest that Members consider three questions:

First, do Members believe frivolous lawsuits waste good people's time and money?

Second, should lawyers who bring frivolous lawsuits face tough mandatory sanctions?

Third, when a court has determined that an attorney has brought at least three frivolous lawsuits under Rule 11, should there be a three strikes and you are out penalty?

If the answers to those questions are yes, Members should vote in favor of this legislation. In fact, I will take it a step further and tell Members flat out that the answers to those questions are yes, at least according to Senator JOHN EDWARDS, a Democrat from North Carolina, who was a plaintiff's personal injury attorney.

On December 15, 2003, Newsweek magazine published an article written by Senator JOHN EDWARDS where he said, ''Frivolous lawsuits waste good people's time and hurt the real victims. Lawyers who bringing frivolous cases should face tough, mandatory sanctions, with a 'three strikes' penalty.''

Mr. Speaker, I agree, and that is precisely what this legislation does. Congress should act today in a bipartisan manner to prevent and punish frivolous lawsuits. We should care about each more and sue each other less. I urge my colleagues to vote yes on the Lawsuit Abuse Reduction Act of 2004.

Mr. SCOTT of Virginia. Mr. Speaker, I yield 4 minutes to the gentlewoman from California (Ms. WATERS).

Ms. WATERS. Mr. Speaker, I rise in strong opposition both to this bill and to the process which produced it. H.R. 4571 would make fundamental changes to the Rule 11 sanctions process without our even receiving the benefit of input from either the Judicial Conference or the Supreme Court.

Mr. Speaker, it is obvious that the proponents of this legislation do not want to hear from our judges because they know that the vast majority of our judges do not agree with this bill. As a matter of fact, I think that this bill could appropriately be named big business versus the people.

Mr. Speaker, big businesses pay expensive lawyers by the hour to protect their interests. Trial lawyers handling many of these cases that are being termed frivolous are paid only if they win.

I would like to quote John Q. Quinn, a veteran trial lawyer from Houston, who sees this as a make-or-break election issue in an article that appeared in the Los Angeles Times. ''Corporate America is in charge these days. They control the White House, the Congress and the Supreme Court. But so far they do not control the right to trial by jury. That is the only place where ordinary citizens can go and have their complaints heard,'' Quinn said. I further quote him when he said ''Ordinary people cannot hire lobbyists in Washington, but in the courtroom they get an equal chance to stand up against a corporation.''

Now the Chamber of Commerce and big corporate America, spending millions of dollars in public relations campaigns, would have Members believe that the number of civil cases have risen and thus the number of frivolous lawsuits, but that is simply not the case. I would like to further quote this Los Angeles Times article which said, ''The Justice Department's Bureau of Justice Statistics and the National Center for State Courts track civil trials and verdicts in the Nation's 75 largest counties. In April, the bureau reported in the last decade the number of cases have gone down, not up.''

The number of general civil cases disposed of by trial in the Nation's largest counties declined from 22,451 in 1992 to 11,908 in 2001. That is a 47 percent decline. The plaintiffs won about half the time, and the overall median award was $37,000 in 2001, down from $65,000 in 1992.

These cases included automobile accidents, medical malpractice and product liability claims. About one-third of the cases involved contract claims which typically involve one business against each other. Mr. Speaker, we are talking about ordinary people. We are talking about people who get up every day and go to work, common folk who just earn sometimes entry-level wages. We are talking about people who could be harmed in an automobile accident or on the job working at a company that does not care about their safety, where they can lose a limb, their eyes, they could be killed. They could lose their lives.

Are we going to prevent the ability of these people to be heard and have their day in court? Big business may not want to accept liability, but it must; and we cannot live in a country where we have big business, because they

have money, come to the Congress of the United States and produce legislation that would prevent the average, little person from having their day in court and being heard by a jury.

Mr. SENSENBRENNER. Mr. Speaker, I yield 3 minutes to the gentlewoman from Pennsylvania (Ms. HART).

Ms. HART. Mr. Speaker, I thank the gentleman from Wisconsin (Chairman SENSENBRENNER) for bringing this bill up today, and I rise in support of the legislation.

Interestingly enough, every Member who has spoken in support of the legislation today is an attorney, me included. In my private practice, I represented small businesses, businesses which employed four or five people on the average.

I recall very clearly their concerns when they came to see me and my colleagues. It was, unfortunately, the fear of lawsuits. Retail businesses today are not opening at the rate they probably should be because of fear of lawsuits. Our economic recovery has begun, but it would be moving along much more quickly but for fear of lawsuits.

We have the opportunity today to prevent many of those lawsuits, lawsuits that are frivolous. This bill will in no way effect anyone who has a legitimate lawsuit. It will only affect those who do not; those who waste money and resources, those who cause a lot of job loss. The Lawsuit Abuse Reduction Act of 2004 will provide for appropriate sanctions against frivolous lawsuits. That means it will provide for fewer frivolous lawsuits.

This bill applies to cases brought by individuals as well as by businesses both big and small, including business claims filed to harass competitors and gain market share. The bill applies to both plaintiffs and defendants if what they are filing is a frivolous action. Polls show that Americans overwhelmingly support legislation barring frivolous lawsuits.

A recent poll showed that 83 percent of likely voters believe there are too many lawsuits in America; 76 percent believe lawsuit abuse results in increased prices for goods and services; and 73 percent of Americans support requiring sanctions against attorneys who file frivolous lawsuits, and that is what this legislation does.

Frivolous lawsuits make businesses and workers suffer. This year the Nation's older ladder manufacturer, a family-owned company in New York, filed for bankruptcy protection and sold off most of its assets due to litigation costs. The company was founded in 1855, but it could not handle the cost of liability insurance which had risen from 6 percent of their sales to nearly 30 percent today, even though the company never actually lost a court judgment. The company owner said, ''We could see the handwriting on the wall, and just want to end this whole thing.''

Let us pass this legislation and make sure that our U.S. manufacturing sector stays strong.

□ 1330

It is our error if we fail to protect them today. Our manufacturing sector, which has been the envy of the world, finds itself mired in a slow recovery due to the cost of many lawsuits.

I encourage my colleagues to support this legislation. It has been costly to our business sector and especially costly to jobs.

Mr. SCOTT of Virginia. Mr. Speaker, I yield 4 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. I thank the distinguished gentleman for his leadership on this issue and a number of Members who have come to the floor to express their opposition to this legislation.

Mr. Speaker, the prime place for the answer to the question of frivolous lawsuits has to be in our judicial system. I am not sure why Congress considers it necessary to interfere on a regular basis with the normal process of the court system. They have done that throughout the years of the leadership of the Republican agenda, particularly as relates to closing the door to the injured, to plaintiffs, with the representation that there are too many frivolous lawsuits.

They did it in product liability, so a child injured on the Nation's playground, their parents could not find their way into the courthouses and have the judges or juries make the decisions that are necessary on the facts that are presented.

In the bankruptcy setting, they attempted to alter the bankruptcy code so that those in the middle class would never be able to go in and file Chapter 11 as our large corporations have been able to do over the years. Why do we feel the necessity to think that we are the arbiter on frivolous lawsuits when we do not have the facts before us?

The legislation we have would reverse the changes to rule 11 of the Federal Rules of Civil Procedure that were made by the Judicial Conference in 1993 such that, one, sanctions against an attorney whose litigation tactics are determined to harass or cause unnecessary delay or cost or who has been determined to have made frivolous legal arguments or unwarranted factual assertions would become mandatory rather than discretionary to the court; two, discovery-related activity would be included within the scope of the rule; and, three, the rule would be extended to State cases affecting interstate commerce so that if a State judge decides that a case affects interstate commerce, he or she must apply rule 11 if violations are found.

This legislation strips State and Federal judges of their discretion in the area of applying rule 11 sanctions. Furthermore, it infringes on States' rights by forcing State courts to apply the rule if interstate commerce is affected. Why is the discretion of the judge not sufficient in discerning whether rule 11 sanctions should be assessed rather than having a must-apply rule implemented on them by eliminating from them the ability to review the facts?

Part of the legal justice system is the eye on the facts, the presence in the courtroom, the lawyers, plaintiffs, defendants, prosecutors, defense lawyers, fact finders in the jury, the judge; not an oversight body way up here in Washington that has no knowledge of what is going on in individual courthouses.

If this legislation moves forward in this body, it will be important for us to find out its effect on indigent plaintiffs or those who must hire an attorney strictly on a contingent-fee basis. Because the application of rule 11 would be mandatory, attorneys will have to enhance their legal fees to account for the additional risk that they will have to incur in filing lawsuits and the fact that they will have no opportunity to withdraw the suit due to a mistake. Mistakes do happen.

Overall, this legislation will deter indigent plaintiffs from seeking counsel to file meritorious claims given the potential of high legal fees. This goes right in the face, if you will, of contingent fees that have been so important to those that have been injured on their job, injured in catastrophic disasters, such as issues dealing with mobility. All of those questions, individuals will now be deterred because lawyers will have this enhanced, if you will, burden that could have been handled in the courthouse.

I have not seen a dearth of judges who have had the ability and the responsibility to throw out frivolous lawsuits, fear doing so. Yet we want to sit on the high and look down the mountain and interject into the courts in Texas, Louisiana, New York, Wisconsin, Georgia and States all around the Nation and legislate what judges already do—create a fair justice system.

The ''Benedict Arnold corporation'' refers to a company that in bad faith takes advantage of loopholes in our Tax Code to establish bank accounts or to ship jobs abroad for the main purpose of tax avoidance, I will support this provision in the motion to recommit.

Let me simply say, in closing, Mr. Speaker, this is a bad legislative initiative. I would ask my colleagues to oppose it. Give all the decisions back to the courthouse and let us have a fair judicial system for all.

Mr. Speaker, I rise in opposition to the base bill before the Committee of the Whole, H.R. 4571, the Lawsuit Abuse Reduction Act of 2004 and state my support for the substitute as offered by the gentleman from Texas, Mr. TURNER.

As I mentioned during the Committee on the Judiciary's oversight hearing on this legislation and reiterated in my statement for the markup, one of the main functions of that body's oversight is to analyze potentially negative impact against the benefits that a legal process or piece of legislation will have on those affected. The base bill before the House today does not represent the product of careful analysis.

In the case of H.R. 4571, the Lawsuit Abuse Reduction Act, this legislation requires an overhaul in order to make it less of a misnomer—to reduce abuse rather than encourage it.

The goal of the tort reform legislation is to allow businesses to externalize, or shift, some of the cost of the injuries they cause to others. Tort law always assigns liability to the party in the best position to prevent an injury in the most reasonable and fair manner. In looking at the disparate impact that the new tort reform laws will have on ethnic minority groups, it is unconscionable that the burden will be placed on these groups—that are in the worst position to bear the liability costs.

When Congress considers pre-empting state laws, it must strike the appropriate balance between two competing values—local control and national uniformity. Local control is extremely important because we all believe, as did the Founders two centuries ago, that state governments are closer to the people and better able to assess needs and desires. National uniformity is also an important consideration, in federalism—Congress' exclusive jurisdiction over interstate commerce has allowed our economy to grow dramatically over the past 200 years.

This legislation would reverse the changes to Rule 11 of the Federal Rules of Civil Procedure (FRCP) that were made by the Judicial Conference in 1993 such that (1) sanctions against an attorney whose litigation tactics are determined to harass or cause unnecessary delay or cost or who has been determined to have made frivolous legal arguments or unwarranted factual assertions would become mandatory rather than discretionary to the court, (2) discovery-related activity would be included within the scope of the Rule, and (3) the Rule would be extended to state cases affecting interstate commerce so that if a state judge decides that a case affects interstate commerce, he or she must apply Rule 11 if violations are found.

This legislation strips state and federal judges of their discretion in the area of applying Rule 11 sanctions. Furthermore, it infringes States' rights by forcing state courts to apply the rule if interstate commerce is affected. Why is the discretion of the judge not sufficient in discerning whether Rule 11 sanctions should be assessed?

If this legislation moves forward in this body, it will be important for us to fund out its effect on indigent plaintiffs or those who must hire an attorney strictly on a contingent-fee basis. Because the application of Rule 11 would be mandatory, attorneys will pad their legal fees to account for the additional risk that they will have to incur in filing lawsuits and the fact that they will have no opportunity to withdraw the suit due to a mistake. Overall, this legislation will deter indigent plaintiffs from seeking counsel to file meritorious claims given the extremely high legal fees.

Furthermore, H.R. 4571, as drafted, would allow corporations that perform sham and non-economic transactions in order to enjoy economic benefits in this country. Therefore, I planned to offer an amendment that would preclude these entities from so benefiting.

The text of the amendment defined the term "Benedict Arnold Corporation" and proposed to prevent such companies from benefiting from the legal remedies that H.R. 4571 purports to offer.

The "Benedict Arnold Corporation" refers to a company that, in bad faith, takes advantage loopholes in our tax code to establish bank accounts or to ship jobs abroad for the main purpose of tax avoidance. A tax-exempt group that monitors corporate influence called "Citizen Works" has compiled a list of 25 Fortune 500 Corporations that have the most offshore tax-haven subsidiaries. The percentage of increase in the number of tax havens held by these corporations since 1997 ranges between 85.7 percent and 9,650 percent.

This significant increase in the number of corporate tax havens is no coincidence when we look at the benefits that can be found in doing sham business transactions. Some of these corporations are "Benedict Arnolds" because they have given up their American citizenship; however, they still conduct a substantial amount of their business in the United States and enjoy tax deductions of domestic corporations.

Such an amendment would preclude these corporations from enjoying the benefit of mandatory attorney sanctions for a Rule 11 violation. By forcing these corporate entities to fully litigate matters brought helps to put their true corporate identity into light and discourages them from performing as many domestic transactions that may be actionable for a claimant.

In the context of the Judiciary's consideration of the Terrorist Penalties Enhancement Act, H.R. 2934, my colleagues accepted an amendment that I offered that ensured that corporate felons were included in the list of individuals eligible for prosecution for committing terrorist offenses. The amendment that I would have offered for this bill has the same intent—to increase corporate accountability and to encourage corporate activity with integrity.

I ask that my colleagues support the substitute offered by Mr. TURNER and defeat the base bill. We must carefully consider the long-term implications that this bill, as drafted, will have on indigent claimants, the trial attorney community, and facilitation or corporate fraud.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentleman from Georgia (Mr. GINGREY).

Mr. GINGREY. I thank the gentleman for yielding me this time.

Mr. Speaker, I rise in very strong support of LARA, the Lawsuit Abuse Reduction Act of 2004.

Mr. Speaker, as many of my colleagues know, during this recent August recess, I spent about 10 days in court defending myself against an alleged medical malpractice suit. I am not sure whether this fits the definition, this particular suit, of a frivolous lawsuit, but after the plaintiff's attorneys presented their evidence, over 8 days, to the jury, the trial judge ruled in favor of me and my two partners in my OB/GYN group on a directed verdict. Her decision was based on the fact that there was no evidence whatsoever presented of proximate causation.

I was willing to defend myself in that lawsuit, but a lot of physicians are not. Many times they are faced with what truly are frivolous lawsuits, and they are sometimes encouraged by their malpractice carrier, if it is determined by the carrier that the cost of defending a lawsuit even though it is frivolous is more than what the settlement amount would be, then they are encouraged and oftentimes do settle. It makes the problem that much worse.

Obviously, this problem and what this law addresses is not just unique to the medical profession. There are 600,000 small business men and women in this country who are literally being put out of business because of frivolous lawsuits and, yes, further loss of jobs, which the other side wants to talk about so often and we are concerned about as well. It is time to end this nonsense of frivolous lawsuits.

As the gentlewoman from Pennsylvania said a few minutes ago, 80 percent of the American public agree with us on this issue. Let us get together, both sides of the aisle, and pass this good, commonsense legislation.

Mr. SCOTT of Virginia. Mr. Speaker, I yield 4½ minutes to the gentleman from Massachusetts (Mr. MARKEY).

Mr. MARKEY. I thank the gentleman for yielding me this time.

Mr. Speaker, just think for a second what is going on in the world this week.

The assault weapons ban expired yesterday, freeing the way for an assault weapons buying frenzy. The Republican Congress refuses to allow a vote on extending the ban on the sale of assault weapons.

Companies all over America continue to offshore American jobs to foreign countries with tax breaks as incentives that the Republicans refuse to take off the books.

Oil prices remain sky high, with analysts expecting them to stay sky high for the foreseeable future, but the Republicans have no plan to protect American consumers from being tipped upside down as they pay gasoline prices and home heating oil prices.

The 9/11 Commission has come back with recommendations that they insist that Congress pass to make sure there is not a repetition of 9/11. The Republican Party refuses to bring those bills out here on the floor.

Osama bin Laden is still at large, and just last week, we had a videotape from his top deputy threatening further attacks on the United States.

We have 1,000 troops who have died in Iraq. We have suffered 5,000 wounded in Iraq, and no end in sight.

North Korea may have exploded a nuclear bomb this week. South Korea is now enriching uranium and plutonium.

So what has the Republican United States Congress decided to do this week? What important issue are we debating? Will it be Iraq? Will it be terrorism? Will it be oil prices? Will it be a stagnant economy? No.

The Republicans have decided that this week, 3 weeks before we adjourn, is lawsuit abuse week, so that we can deny families in our country that have been injured by large corporations from being able to sue those corporations for the damage they did to the children, to the families. And the centerpiece is this Lawsuit Abuse Reduction Act that really should be called the Legislative Abuse Expansion Act.

This bill contains unconstitutional provisions that would force every State court to implement entirely new court rules and procedures. The bill contains unfunded mandates that would force States to conduct an inquiry about what the outcome of the case will be before discovery and trial have even taken place. How is the court supposed to know that? If a case is not lucky enough to be brought before Judge Carnac, the court may have to subpoena witnesses, hold evidentiary hearings and ask the individuals involved to the litigation proceeding to spend time and money on the new ''pretrial trial'' mandated by this bill to block individuals from suing corporations who have hurt American families.

The simple fact is that the amount of civil litigation in this country is not expanding. The Justice Department's Bureau of Justice Statistics and National Center for State Courts track civil cases and verdicts in the Nation's 75 largest counties. They reported in April that, in the last decade, the number of cases has gone down, not up. The bureau reported that the number of general civil cases disposed of by trial in the Nation's largest counties declined from 22,000 in 1992 to 11,000 in 2001, a 47 percent decline.

There is no urgency on this issue. There has been a 47 percent decline in these kind of cases. The plaintiffs won about half the time. And the overall median award was $37,000 in 2001, down from $65,000 in 1992.

Why are we taking these bills up when there is no litigation explosion? Why are we running roughshod over the rights of the States to set rules? Why are we restricting the flexibility of judges to protect ordinary families in our country?

There is only one reason why, because the Republican Party wants to shut down the access that every citizen currently has to our legal system to seek justice and compensation when they have been harmed by the actions of a wealthy corporation. That is what this is all about. Vote ''no'' on this legislation.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, I respect greatly the gentleman from Massachusetts (Mr. MARKEY), but when he armed his cannon, he pointed it at the wrong target. This bill has nothing to do with assault weapons or tax breaks or oil prices or the 9/11 Commission or catching Osama bin Laden or casualties in Iraq or whether the North Koreans have a nuclear weapon or not; nor does it deal with legitimate meritorious lawsuits.

What it does deal with is frivolous lawsuits, frivolous lawsuits as defined by the same Federal Rule of Civil Procedure that was on the books for 10 years, between 1983 and 1993, that 80 percent of the Federal judges when they were surveyed believed should be retained in its then current form. This bill does not restrict the access to the courts to anybody who has got a meritorious claim.

But what it does do is that it sanctions those lawyers who file frivolous lawsuits and deter them from filing frivolous lawsuits again. If we did not have sanctions against people, people would ignore the law. If there were no sanctions for driving 50 miles an hour over the speed limit or running a red light, I think it would be pretty dangerous for all of us when we went home. Because the sanctions that are currently in rule 11 have no deterrent effect against filing frivolous lawsuits, there are too many of them. We have heard about them in this debate.

What this bill does is simply go back to what happened prior to 1993, prevents forum shopping and says that, if a lawyer files repeated frivolous filings in the court three times, they are out. We have got to do that if we want to have our courts be used for the administration of justice rather than being a cover for those who wish to file frivolous papers.

Mr. SCOTT of Virginia. Mr. Speaker, I yield 2 minutes to the gentleman from Washington (Mr. INSLEE).

(Mr. INSLEE asked and was given permission to revise and extend his remarks.)

Mr. INSLEE. Mr. Speaker, there is a fatal defect in this bill, and that fatal defect is that it would essentially refuse to give American citizens relief if they were injured by a foreign corporation's clear and palpable negligence. The defect in this bill is that, if you live in Seattle, you are hurt in Portland by a failure of a Tokyo corporation, this bill says you cannot bring a claim anywhere in the United States against a Japanese corporation that injured you unless that corporation happens to have a retail outlet in the State where you live or where the accident happened.

□ 1345

And this is a very serious matter. If one lives in Seattle, if they are injured in Portland, and the product that injures them is made in Germany or Japan or England, they are out of luck. They are now shielding out-of-U.S. corporations.

I understand the Republican Party's infatuation with outsourcing, but I do not understand why they would expose Americans and say they cannot bring a claim against somebody that makes a foreign car or foreign construction equipment that injures them.

If my colleagues think I am just sort of blowing smoke here, I want to read from the Congressional Research Service memo on this subject. It says: ''However, if a defendant's principal place of business was not in the United States, then this option,'' meaning suing here, ''could not be exercised in the United States court. Consequently, it would appear that in certain circumstances, the United States citizen or resident injured in this country would not have a judicial forum in the United States in which to seek relief.''

What this bill is, is the Foreign Corporation Protection Act. And for the life of me, I cannot figure out why they would want on the Republican side of the aisle to deny American citizens an avenue in an American court under the American judicial system some right of protection when a foreign corporation hurts them. What is the possible rationale for that?

We need to fix this or reject it.

Mr. SENSENBRENNER. Mr. Speaker, I yield 3 minutes to the gentleman from Texas (Mr. SMITH).

Mr. SMITH of Texas. Mr. Speaker, I thank the gentleman from Wisconsin for yielding me this time.

Mr. Speaker, let me respond to some of the concerns voiced by some of those who think they might oppose this bill. First of all, if a foreign corporation is involved, that does not prevent someone from having their day in court. The bill clearly says that it is where the plaintiff lives, and if one is a U.S. citizen, most likely they are going to live in the United States, or where the injury occurred, and the injury would have occurred in this country. So that takes care of their concerns there.

Another previous speaker from Massachusetts started off by talking about the ban on assault weapons. This bill has nothing to do with that, but we do attempt to ban frivolous lawsuits, and in that we are successful. But the gentleman from Massachusetts did make a good point, and I will embrace it entirely, and that is he acknowledged, which I thought was quite an admission, that today there are, in fact, even by his own standards, 11,000 frivolous lawsuits a year. He said they have come down. That is because of the asbestos lawsuits working their way through the various courts. Eleven thousand frivolous lawsuits filed today. I guarantee my colleagues that 99 percent of the American people think 11,000 frivolous lawsuits a year today is 11,000 frivolous lawsuits too many.

Another point I want to respond to, Mr. Speaker, was made by a gentleman who was concerned about the effect of this legislation on civil rights cases that might be filed. I want to assure him and others who might have that similar concern that if they look at section 5 of this bill, it reads: ''Nothing in this bill shall be construed to bar or impede the assertion or development of new claims or remedies under Federal, State, or local civil rights law.'' The reason it says ''new claims'' is because claims that already exist under current law obviously are not frivolous. There is a basis in law for filing those lawsuits. So we protect anybody who might file a civil rights lawsuit in this legislation. Furthermore, if there was some concern about that, one would think that it would have been raised in the full Committee on the Judiciary consideration of this bill. It was not mentioned and no amendments were offered on that point.

Lastly, Mr. Speaker, I also want to reassure not only my colleagues but those who might be listening to this debate that this is not a bill trying to

impugn the motives of all trial lawyers. In fact, the great majority of trial lawyers serve their profession and serve Americans honorably. We are talking about a very few attorneys who, quite frankly, abuse the system, who engage in legalized extortion, who file lawsuits for no other reason than they think someone can settle out of court and they are trying to extract money from them. That is the type of abuse we seek to stop in this bill, and that is the kind of abuse we intend to.

Finally, there are many pieces of legislation considered by this body where we can see where half of the American people might benefit, half might not benefit. But in this case we have at least 99 percent of the American people on one side and just a few lawyers on the other side. And it is very rare, I think, that we would have the vast majority of the American people so clearly favoring one cause, and that is the cause of trying to reduce frivolous lawsuits.

Mr. SCOTT of Virginia. Mr. Speaker, I yield myself the balance of my time.

The SPEAKER pro tempore (Mr. LAHOOD). The gentleman from Virginia (Mr. SCOTT) has 1 minute remaining.

Mr. SCOTT of Virginia. Mr. Speaker, as it has been indicated, there is a serious question in some cases of whether or not the forum shopping is limited, one, to a situation where they cannot file anywhere. But I want to quote from a letter from several civil rights organizations. It states: ''More than a decade ago civil rights organizations, including several of the undersigned organizations, worked to amend Rule 11 because the old rule unfairly discouraged meritorious civil rights claims. Nationwide surveys about the former rule found that motions for sanctions were most frequently sought and granted in civil rights cases.'' This bill ''seeks to take us back to the changes made in 1993 to Rule 11 and force litigants to operate under the terms that we fear, like the former rule we worked so hard to amend, will be used to punish and deter valid claims of discrimination. But'' this bill ''goes even further. Not content with changing rules for Federal courts, the bill extends its reach to State courts,'' where the problem of biased judges would even be more acute.

I would point out again that there is no appeal to these cases and this does not apply to cases under existing law that many judges feel are frivolous.

Mr. Speaker, I yield back the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself the balance of my time.

The SPEAKER pro tempore. The gentleman from Wisconsin (Mr. SENSENBRENNER) has 1 minute remaining.

Mr. SENSENBRENNER. Mr. Speaker, the gentleman from Texas (Mr. SMITH) clearly stated that there is an exemption in this bill on civil rights law and this bill does not apply to the development of new civil rights laws. Further, the survey of the judges that I have referred to in the past, 95 percent of the 751 federal judges believe that the old Rule 11, which the gentleman from Virginia complains of, did not impede the development of the law. That is, 19 judges out of 20 said that the assertion that the gentleman from Virginia made was not correct in their opinion. That is why this bill is a good one and it ought to be passed.

Mr. WEXLER. Mr. Speaker, a vote for this bill is a vote for a rule—rule 11—that it had become an impediment to practicing law, not an impediment to frivolous suits as its proponents would have you think.

The bill before us today seeks to turn back the clock. Eleven years ago, Congress rewrote rule 11 to get rid of mandatory sanctions for frivolous filings because mandatory sanctions had not helped stop frivolous filings and in some cases made them worse. Why then are we going backward today? And if we are going to turn back the clock, why can't we turn back the clock to the unprecedented economic prosperity of the Clinton administration—where we had a balanced budget and a budget surplus, where we had reduced welfare roles and respect on the international stage, and where we had 100,000 new cops on the street and the lowest crime rate in decades.

If we are dead-set on turning back the clock, why must we turn it back to a system that was proven not to work? We tried mandatory sanctions for 10 years. After 10 years with mandatory sanctions, Federal courts recommended against them because they were widely abused and actually added to the wasteful litigating they were intended to prevent.

Our court system is not perfect by any stretch of the imagination. We need to meaningfully address the burden that frivolous lawsuits are placing on our courts and on our society. However, this bill does not provide any new answers; instead it takes us backward to a solution we know doesn't work.

Mr. BISHOP of Georgia. Mr. Speaker, I rise today in opposition to H.R. 4571, the misnamed ''Frivolous Lawsuit Reduction Act,'' and in support of the Turner substitute.

Mr. Speaker, the 11,000 frivolous lawsuits filed yearly are a burden on our court system, which interfere with the administration of justice, and cost U.S. taxpayers millions of dollars each year. I fully support commonsense reform.

H.R. 4571 was drafted by and for large corporations and special interests with unlimited legal resources. It denies justice to injured Americans by limiting them from getting their day in court. That's wrong, Mr. Speaker. It does nothing to help consumers, Mr. Speaker, and targets innocent victims instead of holding responsible those who recklessly or negligently harm others.

The bill also unfairly benefits foreign corporations because it only permits a lawsuit to be filed where the corporation's principal place of business is located, making it more difficult to pursue a personal injury or product liability action against a foreign corporation in the United States. That's also wrong, Mr. Speaker, and it's not the kind of reform that America needs.

The Turner substitute is measured and tough on abuse of the system, while also protecting the rights of injured victims to receive the compensation they deserve. In fact, the substitute's ''three-strikes-and-you're-out'' provisions forbid frivolous filing attorneys from bringing another suit for 10 years. For a first violation the substitute would hold the attorney in contempt. For the second violation the substitute imposes a mandatory fine. And for a third and final violation, a ''third strike,'' you're out. That's tough, Mr. Speaker, and a commonsense approach to frivolous litigation that everyone should support.

The substitute also contains a civil rights carve-out, so that citizens who want to bring new civil rights cases can do so. It contains expedited disposition provisions to weed out junk lawsuits, enhances sanctions for document destruction, and protects injured parties and consumers. Finally, it eliminates the provision in the underlying bill that provides a windfall to foreign or ''Benedict Arnold'' corporations to the disadvantage of their U.S. competitors.

The Turner substitute is tough, Mr. Speaker, it's fair, and it provides real reform while preserving access to the courts for millions of Americans. I urge my colleagues to support it.

Mr. PAYNE. Mr. Speaker, I am pleased to support the Lawsuit Abuse Reduction Act, H.R. 4571, that addresses the problem of frivolous lawsuits in a constitutional manner. As an OB–GYN, I am very aware of the damage frivolous litigation is causing small businesses and medical practitioners. Frivolous lawsuits filed by unscrupulous trial lawyers can drive small businesses into bankruptcy and force doctors to abandon their medical practice. These lawsuits inflict the greatest danger on consumers who must pay more for goods and services and medical patients who cannot find needed medical services in their communities.

H.R. 4571 reduces frivolous lawsuits by exercising Congress's constitutional authority to establish rule of civil procedure for federal courts. Specifically, H.R. 4571 restores mandatory sanctions for attorneys who file frivolous lawsuits. Among other sanctions, attorneys who file frivolous lawsuits may be required to pay the other side's attorneys fees. The possibility of having to pay attorneys fees is an important factor in discouraging ''nuisance'' suits—lawsuits filed in the hopes of extorting cash settlements from defendants who have decided it is better to settle quickly than face the possibility of a lengthy and costly legal proceedings. This form of legal blackmail is one of the most abhorrent practices plaguing our legal system today. I am pleased to see Congress taking action to address it.

H.R. 4571 also ends the practice of forum shopping. Forum shopping is an abuse of Federal ''diversity jurisdiction'' that allows a trial attorney to pick a venue known for awarding large cash awards for spurious claims. All too often, a plaintiff's attorney will choose a forum that has a very tenuous or insignificant relation to the main case, but has a reputation for awarding huge victories to the plaintiff's bar. Forum shopping is especially a problem in class action suits. H.R. 4571 addresses this problem by requiring cases be filed in the Federal district or State where the plaintiff resides, the State or Federal district where the plaintiff was injured or the State or Federal district where the defendant's principal place of business is located.

Mr. Speaker, frivolous lawsuits endanger small business across the country. I am pleased to see Congress today addressing the

litigation crisis, not by attempting to nationalize tort law, but by exercising our constitutional authority over the rules of Federal civil procedure and diversity jurisdiction. I, therefore, urge all my colleagues to support H.R. 4571, the Lawsuit Abuse Reduction Act.

Mr. STARK. Mr. Speaker, I rise in opposition to the so-called Lawsuit Abuse Reduction Act, Nonprofit Athletic Organization Protection Act, and Volunteer Pilot Organization Protection Act. The Republicans are now so desperate to run against trial lawyers in this election that they have turned against our judicial system, student athletes, and countless other Americans.

Almost all volunteers, including coaches, are already protected from frivolous lawsuits by the Volunteer Protection Act of 1997, but the Republicans want to go beyond the better judgment and bipartisan consensus of 1997 in order to create an election-year issue.

Under the athletic organization act, an organization like the NCAA could violate title IX by failing to provide equal opportunities for female athletes, or court violate civil rights, antitrust, or labor laws, and not be held accountable in court.

The 1997 Volunteer Protection Act rightly excluded volunteers who operate ''a motor vehicle, vessel [or] aircraft'' from legal immunity for negligence because volunteerism has to be encouraged without sacrificing the rights of injured parties. The pilot organization protection act destroys this balance by holding most pilots to one standard but allowing volunteer pilots to escape liability for negligence.

The Lawsuit Abuse Protection Act hurts all Americans by exposing them and their attorneys to motions intended to harass them and slow down the legal process, a tactic often used by wealthy defendants in civil rights trials. This is one of many reasons why the U.S. Judicial Conference, headed by Chief Justice William Rehnquist, opposes this bill. H.R. 4571 is also unconstitutional, because it forces every state court to implement new court rules and procedures, even though Congress has no jurisdiction over state courts.

Mr. Speaker, I am happy to stand up for our Constitution, judicial system, athletes, and all Americans by voting ''no'' on these three bills. If that makes me a friend of the trial lawyers, then I proudly stand with Thurgood Marshall, William Jennings Bryan, and Abraham Lincoln over TOM DELAY and George W. Bush.

Mr. BLUMENAUER. Mr. Speaker, H.R. 4571 is a thinly veiled attack on the trial lawyers at the expense of injured plaintiffs. By requiring mandatory sanctions that would apply to civil rights cases, H.R. 4571 will prohibit many legitimate and important civil rights actions from being filed.

No one wants frivolous abuses of our court system. There is no need to sacrifice the rights of individuals to do so. I vote in support of a substitute amendment offered by Congressman TURNER that will protect the civil rights of individuals and against H.R. 4571.

Mr. CONYERS. Mr. Speaker, I do not support this legislation because it will have a significant, adverse impact on the ability of civil rights plaintiffs to seek recourse in our courts, it will operate to benefit foreign corporate defendants at the expense of their domestic counterparts, and it will massively skew the playing field against injured victims.

This bill must be bad given the number of organizations that are opposed to it. This list includes the United States Judicial Conference, the NAACP, Public Citizen, the Alliance for Justice, People for the American Way, the American Association of People with Disabilities, the Lawyers' Committee for Civil Rights Under Law, the American Bar Association, the National Conference on State Legislatures, National Partnership for Women, National Women's Law Center, the Center for Justice & Democracy, Consumers Union, National Association of Consumer Advocates, USAction, U.S. PIRG, and the NAACP Legal Defense Fund.

By requiring a mandatory sanctions regime that would apply to civil rights cases, H.R. 4571 will chill many legitimate and important civil rights actions. This is due to the fact that much if not most of the impetus for the 1993 changes stemmed from abuses by defendants in civil rights cases—namely that civil rights defendants were choosing to harass civil rights plaintiffs by filing a series of rule 11 motions intended to slow down and impede meritorious cases.

Although the bill states that the proposed rule 11 changes shall not be construed to ''bar or impede the assertion or development of new claims or remedies under Federal, State, or local civil rights law,'' the language does not clearly and simply exempt civil rights and discrimination cases, as should be the case. Determining what a ''new claim or remedy'' is will be a daunting and complex issue for most courts and clearly does not cover all civil rights cases in any event.

Section 4, the ''forum shopping'' provision, would operate to provide a litigation and financial windfall to foreign corporations at the expense of their domestic competitors. This is because, instead of permitting claims to be filed wherever a corporation does business or has minimum contacts, as most state long-arm statutes provide, the bill only permits the suit to be brought where the defendant's principal place of business is located—in the case of a foreign corporation, that does not exist in the United States.

If a U.S. citizen is harmed by a product produced or manufactured by a foreign competitor, under H.R. 4571 the harmed U.S. citizen could have no recourse against a foreign corporation, whereas he or she would have recourse against a comparable U.S. corporation. This is unfair to both the U.S. citizen and all U.S. companies that compete against the foreign firm.

I urge you to vote ''no'' to this poorly drafted and unfair piece of legislation.

SEPTEMBER 13, 2004.

DEAR REPRESENTATIVE: We, the undersigned civil rights groups, urge you to vote against H.R. 4571 and H.R. 3369. If enacted, these bills will embolden some to unlawfully discriminate without fear of being held accountable. This legislation will turn back the progress civil rights organizations have made to achieve equal rights under the law these past decades.

Currently, Rule 11 of the Federal Rules of Civil Procedure gives judges discretion to determine whether a claim or defense is frivolous and if so, the appropriate sanctions for such a filing. H.R. 4571 would take away the judge's discretion to impose sanctions and changes Rule 11 of the Federal Rules of Civil Procedure in significant ways that will harm victims of discrimination. By removing the ''safe harbor'' provision that allows a party to withdraw or amend the claim or defense that an opponent argues violates Rule 11 and making sanctions more severe and mandatory, the bill will trigger additional, contentious judicial proceedings that have little to do with the merits of the claims. Thus even civil rights plaintiffs who pursue their legitimate claims with the heightened risk of severe sanctions, may give up at the hands of litigious defendants who employ a rope-a-dope technique to simply wear out their opponents.

Our concerns about the threat to civil rights cases posted by H.R. 4571 are well founded and based on real life experience. More than a decade ago, civil rights organizations—including several of the undersigned organizations—worked to amend Rule 11 because the old rule unfairly discouraged meritorious civil rights claims. Nationwide surveys about the former rule found that motions for sanctions were most frequently sought and granted in civil rights cases. Expressing his concern about the former Rule 11, the Honorable Robert L. Carter, United States District Court Judge for the Southern District of New York, noted, ''I have no doubt that the Supreme Court's opportunity to pronounce separate schools inherently unequal [in Brown v. Board of Education] would have been delayed for a decade had my colleagues and I been required, upon pain of potential sanctions to plead our legal theory explicitly from the start.''

H.R. 4571 seeks to take back the changes made in 1993 to Rule 11 and force litigants to operate under the terms that we fear, like the former rule we worked so hard to amend, will be used to punish and deter valid claims of discrimination. But H.R. 4571 goes even further. Not content with changing the rules for federal courts, the bill extends its reach to State court cases. Upon motion, the court is required to assess the costs of the action ''to the interstate economy.'' If the court determines that the state court action ''affects interstate commerce,'' Rule 11 of the Federal Rules of Civil Procedure ''shall apply to such action.'' Imagining the proceedings necessary to determine whether a particular state court action ''affects interstate commerce'' is mind-boggling. Moreover, the total disregard for federalism is astounding.

We also oppose H.R. 3369, the ''Nonprofit Athletic Organization Protection Act.'' This bill gives immunity to nonprofit athletic organizations. The scope of the legislation could protect an organization that violates federal or state law by discriminating against an athlete on the basis of race, gender, disability or other protections given under federal or state law. No evidence has been presented that nonprofit athletic organizations need such protection. Coaches and other volunteers are already protected from liability under the 1997 Volunteer Protection Act.

We understand that members of Congress who oppose H.R. 3369 risk being accused of siding with ''trial lawyers'' over ''Little Leagues,'' particularly this election season. But it is not the ''trial lawyers'' that need your protection; it is the players themselves and others who may be discriminated against and may have no recourse under this bill who need your protection. Therefore, we respectfully ask you to oppose the bill.

If you have any questions or need more information, please contact Hilary O. Shelton, Director, NAACP Washington Bureau, 202.463.2940 or Sandy Brantley, Legislative Counsel, Alliance for Justice, 202.822.6070.

Sincerely,

Alliance for Justice, American Association of People with Disabilities (AAPD), Lawyers' Committee for Civil Rights Under Law, National Association for the Advancement of Colored People (NAACP), National Partnership for Women, National Women's Law

Center, People For the American Way, USAction, U.S. Public Interest Research Group (U.S. PIRG).

JUDICIAL CONFERENCE
OF THE UNITED STATES,
Washington, DC, July 9, 2004.

Hon. F. JAMES SENSENBRENNER, Jr.,
Chairman, Committee on the Judiciary, House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: On behalf of the Judicial Conference, I write to urge you to reconsider your position on the ''Lawsuit Abuse Reduction Act of 2004'' (H.R. 4571). Section 2 of the bill would reinstitute a rule eliminated in 1993 upon the recommendation of the Judicial Conference, approval by the Supreme Court, and after review by Congress, because of the serious problems it engendered during a ten-year period of operation. Section 2 also would amend Rule 11 of the Federal Rules of Civil Procedure in a manner inconsistent with the longstanding Judicial Conference policy opposing direct amendment of the federal rules by legislation. Section 3 of H.R 4571 would apply the revised federal Rule 11 to certain state court actions, while section 4 would amend the venue standards governing the filing of tort actions in both the federal and state courts: Sections 3 and 4 implicate federal-state comity interests and raise important policy and practical concerns.

SECTION 2

Section 2 would directly amend Civil Rule 11 to remove a court's discretion to impose sanctions on a frivolous filing and eliminate the rule's ''safe-harbor'' provisions. The bill undoes amendments to Rule 11 that took effect on December 1, 1993, and would bring back the provisions that were first introduced in 1983 and removed from the rule in 1993, after a decade of signally bad experiences with the operation and effects of the 1983 rule.

Like H.R. 4571, the 1983 version of Rule 11 required sanctions for every violation of the rule. It spawned thousands of court decisions and generated widespread criticism. The rule was abused by resourceful lawyers, and an entire ''cottage industry'' developed that churned tremendously wasteful satellite litigation that had everything to do with strategic gamesmanship and little to do with underlying claims. Rule 11 motions came to be met with counter motions that sought Rule 11 sanctions for making the original Rule 11 motion.

Some of the other serious problems caused by the 1983 amendments to Rule 11 included:

(1) creating a significant incentive to file unmeritorious Rule 11 motions by providing a possibility of monetary penalty;

(2) engendering potential conflict of interest between clients and their lawyers, who advised withdrawal of particular claims despite the clients' preference;

(3) exacerbating tensions between lawyers; and

(4) providing little incentive, and perhaps a distinct disincentive, to abandon or withdraw a pleading or claim—and thereby admit error—that lacked merit after determining that it no longer was supportable in law or fact.

The 1993 amendments to Rule 11 were designed to strike a fair and equitable balance between competing interests, remedy the major problems with the rule, and allow courts to focus on the merits of the underlying cases rather than on Rule 11 motions. The rule establishes a safe harbor, providing a party 21 days within which to withdraw a particular claim or defense before sanctions can be imposed. If the party fails to withdraw an allegedly frivolous claim or defense within the 21 days, a court may impose sanctions, including assessing reasonable attorney fees. The 1983 Rule 11 authorized a court to sanction discovery-related abuse under Rule 11, Rule 26(g), or Rule 37, which created confusion. Under the 1993 amendments to Rule 11, sanctioning of discovery-related abuse was limited to Rules 26 and 37, which provide for sanctions that include awards of reasonable attorney fees.

The 1993 amendments to Rule 11 culminated a long, critical examination of the rule begun four years earlier. The Advisory Committee on Civil Rules (Advisory Committee) reviewed a significant number of empirical examinations of the 1983 Rule 11, including three separate studies conducted by the Federal Judicial Center in 1985, 1988, and 1991, a Third Circuit Task Force report on Rule 11 in 1989, and a New York State Bar Committee report in 1987. The Advisory Committee took note of several book-length analyses of Rule 11 case law.

The 1991 Federal Judicial Center survey noted that most federal judges believed that the 1983 version of Rule 11 had positive effects. But the study also noted that most judges found several other methods more effective than Rule 11 in handling such litigation and, most significantly, that about one-half of the judges reported that Rule 11 exacerbates behavior between counsel. After reviewing the literature and empirical studies of problems caused by the 1983 amendments to Rule 11, the Advisory Committee issued in 1990 a preliminary call for general comment on the operation and effect of the rule. The response was substantial, calling for a change in the rule.

The Advisory Committee concluded that the cost-shifting in Rule 11 created an incentive for too many unnecessary Rule 11 motions. Amendments to Rule 11 were drafted. The Supreme Court promulgated and transmitted the amendments to Congress in May 1993 after extensive scrutiny and debate by the bench, bar, and public in accordance with the Rules Enabling Act process (28 U.S.C. §§ 2071–2077).

Experience with the amended rule since 1993 has demonstrated a marked decline in Rule 11 satellite litigation without any noticeable increase in the number of frivolous filings. In June 1995, the Federal Judicial Center conducted a survey of 1,130 lawyers and 148 judges on the effects of the 1993 Rule 11 amendments. About 580 attorneys and 120 judges responded to the survey. The Center found general satisfaction with the amended rule. It also found that more than 75% of the judges and lawyers would oppose a provision that would require a court to impose a sanction when the rule is violated. A majority of the judges and lawyers, both plaintiffs' and defendants' lawyers, believed that groundless litigation was handled effectively by judges.

Undoing the 1993 Rule 11 amendments, even though no serious problem has been brought to the Judicial Conference rules committees' attention, would frustrate the purpose and intent of the Rules Enabling Act. Section 2 of H.R. 4571 would effectively reinstate the 1983 version of Rule 11 that proved so contentious and wasted so much time and energy of the bar and bench. Section 2, indeed, in some ways seems to go beyond the provisions that created serious problems with the 1983 rule. It may cause even greater mischief. Rule 11 in its present form has proven effective and should not be revised.

SECTIONS 3 AND 4

Section 3 would extend the new requirements of a mandatory Rule 11 to all state court litigation that the state court deems, on motion, to affect interstate commerce. Two features of this provision stand out. First, it would directly regulate the practice and procedure of state courts, mandating a federal standard for the imposition of sanctions for the filing of frivolous or ungrounded complaints and other papers in state court. At present, states have been free to adopt their own rules of practice, including a version of Rule 11, if a state so chooses. Second, section 3 does not specify the actions to which it would apply. Rather, it imposes on state judges a broad generalized test to determine whether or not federal Rule 11 would apply in a given case. If enacted, this section could affect the cost and duration of a very large number of civil actions in state courts.

Section 4 seeks to prevent forum shopping by specifying the places where a plaintiff may bring a ''personal injury'' claim by imposing a federal standard for determining the venue of state law personal injury claims, in both state and federal court. Such a federal standard would displace existing state venue rules or statutes. It would also significantly alter the statutes in title 28, United States Code, that now govern venue (section 1391) and transfer of venue (section 1404) in the federal courts.

The Judicial Conference opposes the enactment of H.R. 4571 for the reasons stated above as to section 2. Sections 3 and 4 would make important changes in the administration of civil justice in both federal and state courts. The Judicial Conference has not had the opportunity to formally assess the advisability or impact of these sections, but notes that they may substantially affect federal-state comity interests and raise important policy and practical concerns.

The Judicial Conference greatly appreciates your consideration of its views. If you or your staff have any questions, please contact Michael W. Blommer, Assistant Director, Office of Legislative Affairs, Administrative Office of the U.S. Courts, at (202) 502–1700.

Sincerely,

LEONIDAS RALPH MECHAM,
Secretary.

NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE,
Washington, DC, September 14, 2004.

Re NAACP opposition to H.R. 4571, the so-called ''Frivolous Lawsuit Reduction Act''.

MEMBERS,
House of Representatives,
Washington, DC.

DEAR MEMBER OF CONGRESS: On behalf of the National Association for the Advancement of Colored People (NAACP), our nation's oldest, largest and most widely-recognized grass roots civil rights organization, I am writing to urge you, in the strongest terms possible, to oppose H.R. 4571, the so-called ''Frivolous Lawsuit Reduction Act.'' Specifically, the NAACP is convinced that should this misguided legislation become law, it will have a serious and adverse impact on the ability to bring civil rights cases.

While the NAACP is actively opposed to strategic lawsuits against public participation (SLAPP suits), a careful review of H.R. 4571 shows clearly that this particular legislation does not address our concerns. In fact, if enacted, H.R. 4571 would embolden some to unlawfully discriminate without fear of being held accountable. H.R. 4571 would dramatically alter the operation of Rule 11 of the Federal Rules of Civil Procedure and apply the new rule to state as well as federal courts. Rule 11 prohibits attorneys from engaging in litigation tactics that harass or cause unnecessary delay or cost, or from making frivolous legal arguments or unwanted factual assertions. The current Rule

11 was adopted in 1993 in an effort to correct numerous problems resulting from amendments that had been made in 1983. Rather than curbing the problem of frivolous lawsuits, as it was intended to do, the 1983 revisions spawned thousands of court decisions and generated widespread criticism. It was abused by resourceful attorneys and resulted in wasteful satellite litigation and rising incivility of the bar.

Furthermore, much of the impetus for the 1993 changes stemmed from abuses by defendants in civil rights cases; civil rights defendants were choosing to harass civil rights plaintiffs by filing a series of Rule 11 motions intended to slow down or impeded meritorious cases or intimidate the defendants or their attorneys. In fact, several studies determined that prior to the 1993 changes Rule 11 motions were used more frequently in civil rights cases than any other types of lawsuits.

While language nominally intended to mitigate the damage that this bill will cause to civil rights cases has been added, it is vague and simply insufficient in addressing our concerns. Even with this weak and ineffective provision, H.R. 4571 would be extremely detrimental to those of us who are forced to seek legal recourse to address discrimination in our country. Thus, I urge you again, in the strongest terms possible, to oppose H.R. 4571 and to see that it is defeated. Should you have any questions about this legislation or the NAACP opposition to it, please feel free to contact either me or Carol Kaplan on my staff at (202) 463–2940. Thank you in advance for your consideration of the NAACP position.

Sincerely,

HILARY O. SHELTON,
Director.

AMERICAN BAR ASSOCIATION,
GOVERNMENTAL AFFAIRS OFFICE,
Washington, DC, June 29, 2004.

Hon. F. JAMES SENSENBRENNER, Jr.,
Chairman, Committee on the Judiciary, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: I am writing to you regarding the hearing your Committee held June 22, 2004 on H.R. 4571, legislation to make changes in Rule 11 of the Federal Rules of Civil Procedure; make an amended Rule 11 of the Federal Rules of Civil Procedure applicable to cases filed in state courts if such cases affect interstate commerce; and make changes relating to jurisdiction and venue for personal injury cases filed in state and federal courts.

The ABA opposes the provisions in the legislation that would change the Federal Rules of Civil Procedure without going through the process set forth in the Rules Enabling Act. The ABA fully supports the Rules Enabling Act process, which is based on three fundamental concepts: (1) the central role of the judiciary in initiating judicial rulemaking, (2) procedures that permit full public participation, including by the members of the legal profession, and (3) recognition of a congressional review period. We view the proposed rules changes to the Federal Rules in H.R. 4571 as a retreat from the Rules Enabling Act.

In 28 U.S.C. §§2072–74, Congress prescribed the appropriate procedure for the formulation and adoption of rules of evidence, practice and procedure for the federal courts. This well-settled, Congressionally-specified procedure contemplates that evidentiary and procedural rules will in the first instance be considered and drafted by committees of the United States Judicial Conference, will thereafter be subject to thorough public comment and reconsideration, will then be submitted to the United States Supreme Court for consideration and promulgation, and will finally be transmitted to Congress, which retains the ultimate power to veto any rule before it takes effect.

This time-proven process proceeds from separation-of-powers concerns and is driven by the practical recognition that, among other things:

(1) Rules of evidence and procedure are inherently a matter of intimate concern to the judiciary, which must apply them on a daily basis;

(2) Each rule forms just one part of a complicated, interlocking whole, rendering due deliberation and public comment essential to avoid unintended consequences; and

(3) The Judicial Conference is in a unique position to draft rules with care in a setting isolated from pressures that may interfere with painstaking consideration and due deliberation.

We do not question congressional power to regulate the practice and procedure of federal courts. Congress exercised this power by delegating its rulemaking authority to the judiciary through the enactment of the Rules Enabling Act, while retaining the authority to review and amend rules prior to their taking effect. We do, however, question the wisdom of circumventing the Rules Enabling Act, as H.R. 4571 would.

We also have serious concerns about the provisions in H.R. 4571 that would impose the Federal Rules on the state courts and would impose the changes relating to jurisdiction and venue for personal injury cases filed in state and federal courts. We hope your Committee will not move on legislation containing such departures from current law until we and others have sufficient time to analyze the impact they would have on the state courts and so we will be able to present our views to you on these very important matters.

We respectfully request that this letter be made part of the permanent hearing record of June 22, 2004.

Sincerely,

ROBERT D. EVANS.

Mr. GOODLATTE. Mr. Speaker, I rise today in support of H.R. 4571, the Lawsuit Abuse Reduction Act.

Last year, I introduced legislation to address the escalating problems that accompany frivolous lawsuits, the Class Action Fairness Act. This legislation would reform the Federal rules that govern class actions so that truly interstate lawsuits would be heard in Federal courts, like the Framers envisioned. The current class action rules provide an opportunity for opportunistic lawyers to game the system and extort money from legitimate businesses.

The abuse of the class action process is just one example of how the current litigious atmosphere in our country threatens to undermine the growth and innovation that has characterized our great Nation since its founding. Frivolous lawsuits force businesses to waste time and resources that could otherwise be spent on new products, new services, or innovative procedures that could reduce the costs of goods and services for consumers.

Small businesses rank the cost and availability of liability insurance second only to the costs of health care as their top priority. Not coincidentally, both of these problems are fueled by frivolous lawsuits.

H.R. 4571 is another commonsense approach to combat frivolous lawsuits. It would restore mandatory sanctions for filing frivolous lawsuits and allow monetary sanctions, including attorney's fees and compensatory costs, against any party making a frivolous claim. H.R. 4571 would also allow sanctions for abuse of the discovery process, and would abolish the current "free pass" provision that allows lawyers to avoid sanctions if they withdraw the frivolous claim within 21 days after a motion for sanctions has been filed.

By restoring strong penalties against those that file frivolous claims, the Lawsuit Abuse Reduction Act will give businesses the freedom to devote their resources to doing business, rather than wasting their resources defending frivolous litigation.

I urge my colleagues to support this important legislation.

Mr. SENSENBRENNER. Mr. Speaker, I yield back the balance of my time.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. TURNER OF TEXAS

Mr. TURNER of Texas. Mr. Speaker, I offer an amendment in the nature of a substitute.

The SPEAKER pro tempore. The Clerk will designate the amendment in the nature of a substitute.

The text of the amendment in the nature of a substitute is as follows:

Amendment in the nature of a substitute offered by Mr. TURNER of Texas:

Strike all after the enacting clause and insert the following:

SEC. 1. "THREE STRIKES AND YOU'RE OUT" FOR FRIVOLOUS PLEADINGS.

(a) SIGNATURE REQUIRED.—Every pleading, written motion, and other paper in any action shall be signed by at least 1 attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) CERTIFICATE OF MERIT.—By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances—

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a non frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; and

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are reasonable based on a lack of information or belief.

(c) MANDATORY SANCTIONS.—

(1) FIRST VIOLATION.—If, after notice and a reasonable opportunity to respond, a court, upon motion or upon its own initiative, determines that subsection (b) has been violated, the court shall find each attorney or party in violation in contempt of court and shall require the payment of costs and attorneys fees. The court may also impose additional appropriate sanctions, such as striking the pleadings, dismissing the suit, and sanctions plus interest, upon the person in violation, or upon both such person and such person's attorney or client (as the case may be).

(2) SECOND VIOLATION.—If, after notice and a reasonable opportunity to respond, a court, upon motion or upon its own initiative, determines that subsection (b) has been violated and that the attorney or party with respect to which the determination was made

has committed one previous violation of subsection (b) before this or any other court, the court shall find each such attorney or party in contempt of court and shall require the payment of costs and attorneys fees, and require such person in violation (or both such person and such person's attorney or client (as the case may be)) to pay a monetary fine. The court may also impose additional appropriate sanctions, such as striking the pleadings, dismissing the suit and sanctions plus interest, upon such person in violation, or upon both such person and such person's attorney or client (as the case may be).

(3) THIRD AND SUBSEQUENT VIOLATIONS.—If, after notice and a reasonable opportunity to respond, a court, upon motion or upon its own initiative, determines that subsection (b) has been violated and that the attorney or party with respect to which the determination was made has committed more than one previous violation of subsection (b) before this or any other court, the court shall find each such attorney or party in contempt of court, refer each such attorney to one or more appropriate State bar associations for disciplinary proceedings, require the payment of costs and attorneys fees, and require such person in violation (or both such person and such person's attorney, or client (as the case may be)) to pay a monetary fine. The court may also impose additional appropriate sanctions, such as striking the pleadings, dismissing the suit, and sanctions plus interest, upon such person in violation, or upon both such person and such person's attorney or client (as the case may be).

(4) APPEAL; STAY.—An attorney has the right to appeal a sanction under this subsection. While such an appeal is pending, the sanction shall be stayed.

(5) NOT APPLICABLE TO CIVIL RIGHTS CLAIMS.—Notwithstanding subsection (d), this subsection does not apply to an action or claim arising out of Federal, State, or local civil rights law or any other Federal, State, or local law providing protection from discrimination.

(d) APPLICABILITY.—Except as provided in subsection (c)(5), this section applies to any paper filed on or after the date of the enactment of this Act in—

(1) any action in Federal court; and

(2) any action in State court, if the court, upon motion or upon its own initiative, determines that the action affects interstate commerce.

SEC. 2. "THREE STRIKES AND YOU'RE OUT" FOR FRIVOLOUS CONDUCT DURING DISCOVERY.

(a) SIGNATURES REQUIRED ON DISCLOSURES.—Every disclosure made pursuant to subdivision (a)(1) or subdivision (a)(3) of Rule 26 of the Federal Rules of Civil Procedure or any comparable State rule shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. An unrepresented party shall sign the disclosure and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the disclosure is complete and correct as of the time it is made.

(b) SIGNATURES REQUIRED ON DISCOVERY.—

(1) IN GENERAL.—Every discovery request, response, or objection made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. An unrepresented party shall sign the request, response, or objection and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the request, response, or objection is:

(A) consistent with the applicable rules of civil procedure and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

(B) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(C) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation.

(2) STRICKEN.—If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.

(c) MANDATORY SANCTIONS.—

(1) FIRST VIOLATION.—If without substantial justification a certification is made in violation of this section, the court, upon motion or upon its own initiative, shall find each attorney or party in contempt of court and shall require the payment of costs and attorneys fees. The court may also impose additional sanctions, such as imposing sanctions plus interest or imposing a fine upon the person in violation, or upon such person and such person's attorney or client (as the case may be).

(2) SECOND VIOLATION.—If without substantial justification a certification is made in violation of this section and that the attorney or party with respect to which the determination is made has committed one previous violation of this section before this or any other court, the court, upon motion or upon its own initiative, shall find each attorney or party in contempt of court and shall require the payment of costs and attorneys fees, and require such person in violation (or both such person and such person's attorney or client (as the case may be)) to pay a monetary fine. The court may also impose additional sanctions upon such person in violation, or upon both such person and such person's attorney or client (as the case may be).

(3) THIRD AND SUBSEQUENT VIOLATIONS.—If without substantial justification a certification is made in violation of this section and that the attorney or party with respect to which the determination is made has committed more than one previous violation of this section before this or any other court, the court, upon motion or upon its own initiative, shall find each attorney or party in contempt of court, shall require the payment of costs and attorneys fees, require such person in violation (or both such person and such person's attorney or client (as the case may be)) to pay a monetary fine, and refer such attorney to one or more appropriate State bar associations for disciplinary proceedings. The court may also impose additional sanctions upon such person in violation, or upon both such person and such person's attorney or client (as the case may be).

(4) APPEAL; STAY.—An attorney has the right to appeal a sanction under this subsection. While such an appeal is pending, the sanction shall be stayed.

(d) APPLICABILITY.—This section applies to any paper filed on or after the date of the enactment of this Act in—

(1) any action in Federal court; and

(2) any action in State court, if the court, upon motion or upon its own initiative, determines that the action affects interstate commerce.

SEC. 3. BAN ON CONCEALMENT OF UNLAWFUL CONDUCT.

(a) IN GENERAL.—A court may not order that a court record be sealed or subjected to a protective order, or that access to that record be otherwise restricted, unless the court makes a finding of fact in writing that identifies the interest that justifies the order and that determines that the order is no broader than necessary to protect that interest.

(b) APPLICABILITY.—This section applies to any court record, including a record obtained through discovery, whether or not formally filed with the court.

SEC. 4. ENHANCED SANCTIONS FOR DOCUMENT DESTRUCTION.

(a) IN GENERAL.—Whoever influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, a pending court proceeding through the intentional destruction of documents sought in, and highly relevant to, that proceeding—

(1) shall be punished with mandatory civil sanctions of a degree commensurate with the civil sanctions available under Rule 37 of the Federal Rules of Civil Procedure, in addition to any other civil sanctions that otherwise apply; and

(2) shall be held in contempt of court and, if an attorney, referred to one or more appropriate State bar associations for disciplinary proceedings.

(b) APPLICABILITY.—This section applies to any court proceeding in any Federal or State court.

SEC. 5. EXPEDITED DISPOSITION OF FRIVOLOUS AND OTHER LAWSUITS.

(a) IN GENERAL.—For each State, each judicial district in the State shall, within 2 years of the date of the enactment of this Act, develop and implement a civil justice expense and delay reduction plan and submit it to the appropriate governing body of the State. The governing body shall make the plan available to the public.

(b) PRINCIPLES.—Each plan required by subsection (a) shall apply to actions in State court that affect interstate commerce and any other actions that the governing body considers appropriate. The plan shall be developed and implemented with regard to the following principles:

(1) Systematic, differential treatment of civil cases that tailors the level of individualized and case specific management to such criteria as case complexity, the amount of time reasonably needed to prepare the case for trial, and the judicial and other resources required and available for the preparation and disposition of the case.

(2) Early and ongoing control of the pretrial process through involvement of a judicial officer in—

(A) assessing and planning the progress of a case;

(B) setting early, firm trial dates, such that the trial is scheduled to occur within eighteen months after the filing of the complaint, unless a judicial officer certifies that—

(i) the demands of the case and its complexity make such a trial date incompatible with serving the ends of justice; or

(ii) the trial cannot reasonably be held within such time because of the complexity of the case or the number or complexity of pending criminal cases;

(C) controlling the extent of discovery and the time for completion of discovery, and ensuring compliance with appropriate requested discovery in a timely fashion; and

(D) setting, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition.

(3) For all cases that the court or an individual judicial officer determines are complex and any other appropriate cases, careful

and deliberate monitoring through a discovery-case management conference or a series of such conferences at which the presiding judicial officer—

(A) explores the parties' receptivity to, and the propriety of, settlement or proceeding with the litigation;

(B) identifies or formulates the principal issues in contention and, in appropriate cases, provides for the staged resolution or bifurcation of issues for trial consistent with Rule 42(b) of the Federal Rules of Civil Procedure;

(C) prepares a discovery schedule and plan consistent with any presumptive time limits that a district court may set for the completion of discovery and with any procedures a district court may develop to—

(i) identify and limit the volume of discovery available to avoid unnecessary or unduly burdensome or expensive discovery; and

(ii) phase discovery into two or more stages; and

(D) sets, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition.

(4) Encouragement of cost-effective discovery through voluntary exchange of information among litigants and their attorneys and through the use of cooperative discovery devices.

(5) Conservation of judicial resources by prohibiting the consideration of discovery motions unless accompanied by a certification that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matters set forth in the motion.

(6) Authorization to refer appropriate cases to alternative dispute resolution programs that—

(A) have been designated for use in a district court; or

(B) the court may make available, including mediation, minitrial, and summary jury trial.

(c) TECHNIQUES.—In developing the plan required by subsection (a), a judicial district shall consider and may include the following techniques:

(1) A requirement that counsel for each party to a case jointly present a discovery-case management plan for the case at the initial pretrial conference, or explain the reasons for their failure to do so.

(2) A requirement that each party be represented at each pretrial conference by an attorney who has the authority to bind that party regarding all matters previously identified by the court for discussion at the conference and all reasonably related matters.

(3) A requirement that all requests for extensions of deadlines for completion of discovery or for postponement of the trial be signed by the attorney and the party making the request.

(4) A neutral evaluation program for the presentation of the legal and factual basis of a case to a neutral court representative selected by the court at a nonbinding conference conducted early in the litigation.

(5) A requirement that, upon notice by the court, representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conference.

(6) Such other features as the judicial district considers appropriate.

The SPEAKER pro tempore. Pursuant to House Resolution 766, the gentleman from Texas (Mr. TURNER) and the gentleman from Wisconsin (Mr. SENSENBRENNER) each will control 20 minutes.

Mr. TURNER of Texas. Mr. Speaker, I yield myself such time as I may consume.

I offered a substitute, which I believe is much stronger in preventing frivolous lawsuits than the bill offered to the House. In addition, it preserves the right that was mentioned earlier to sue a foreign corporation, which is jeopardized in the bill offered before us.

The Republican bill also weakens our civil rights laws by having a chilling effect upon suits relating to civil rights, and our substitute carves out an exception for civil rights litigation. But, most importantly, it does not eliminate the possibility that one may be unable to sue a foreign corporation in the United States.

First of all, our bill strengthens the provisions against frivolous lawsuits. Members on both sides of the aisle uniformly, unanimously agree that our laws and our rules of procedure must prohibit frivolous lawsuits. Our bill imposes a mandatory ''three strikes and you're out'' provision on frivolous pleadings and discovery violations. Thus, it is far more stringent than the Republican bill, which merely subjects these violations to mandatory payment of cost and fees. More importantly, our bill includes clear and specific civil rights carve outs so there will not be a chilling effect on these actions. We also amend the United States Code so that the change is not subject to future changes and modifications by the courts as the Republican bill would be.

Second, our bill limits the ability of corporate wrongdoers to conceal any conduct harmful to the public welfare by requiring that court records may not be sealed unless the court first enters a finding that such sealing is justified. This provision will help ensure that information on dangerous products and actions is made available to the public. A nearly identical provision passed by voice vote in the 107th Congress with the support of the gentleman from Wisconsin (Chairman SENSENBRENNER). The Republican bill does not contain this very important protection.

Third, we provide that parties which destroy documents in connections with civil proceedings shall be punished with mandatory civil sanctions, held in contempt of court, and referred to the State bar for disciplinary proceedings. Again, this is far tougher than the Republican bill, which does not provide for contempt of court and disciplinary proceedings.

And, fourth, we specify that the Civil Justice Reform Act, which has been so successful in the Federal courts, be applied to all courts in order to speed up the pretrial process and to weed out junk lawsuits.

And, finally, unlike the Republican bill, our substitute does not have this new rule of jurisdiction that operates to make it impossible to sue a foreign corporation in this country and, further, by the absence of such provision, promotes corporations in our own country continuing this despicable process of relocating their headquarters overseas in order to avoid U.S. taxes, and now they will do so to avoid being sued. There is no reason to give these companies a windfall profit, windfall gain, at the expense of corporations who do the right thing and stay here at home.

This is a common sense substitute. It cracks down on frivolous lawsuits even more forcefully than the Republican bill. It preserves our antitrust laws and our ability to obtain justice against foreign corporations. It is a better bill, a stronger bill, and one that we would urge this House to substitute for the bill offered by our Republican colleagues.

Mr. Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong opposition to this substitute amendment which guts the bill.

Where to begin? I will begin with the title of the first section of the substitute. It is entitled ''Three Strikes and You're Out.'' But it is not true when we read the substitute. In fact, the substitute provides that following three violations of this provision, the court ''shall refer each such attorney to one or more appropriate State bar associations for disciplinary proceedings.'' Three strikes and you are still in.

The Democratic substitute does not say that the attorney shall be suspended from the practice of law. That is what the base bill says. The bill says that after three strikes ''The Federal District court shall suspend that attorney from the practice of law in that Federal District Court.''

The base bill follows through on its ''three strikes and you're out'' promise. The Democratic substitute says ''three strikes and you have a foul ball.''

But it gets worse. Not only are the filers of frivolous lawsuits not out after three strikes under the Democratic substitute, but the Democratic substitute even changes what a strike is under existing law. Currently Rule 11 contains four criteria that can lead to a Rule 11 violation. The Democratic substitute references only three, kind of like shrinking the strike zone.

Currently, Rule 11 allows sanctions against frivolous filers whose denials of factual contentions are not ''warranted on the evidence'' or are not ''reasonably based on the lack of information and belief.'' The Democratic substitute removes this protection from the victims of frivolous lawsuits under existing law. The Democratic substitute for the first time without penalty allows defendants to file papers with the court that include factual denials of allegations against them that are not warranted by the evidence and not reasonably based. In other words, misleading and unfactual filings end up getting a get-out-of-jail-free card under the Democratic substitute.

□ 1400

Instead, the substitute provides additional protection for defendants filing frivolous defenses that are not warranted by the evidence and not reasonably based. This is a step backward for victims of frivolous lawsuits under both State and Federal law.

Further, the base bill provides that those who file frivolous lawsuits can be made to pay all of the costs and attorneys' fees that are ''incurred as a direct result of filing of the pleading, motion, or other paper, that is the subject of the violation.'' The Democratic substitute does not include that critical language, which is necessary to make clear that those filing frivolous lawsuits must be made to pay the full costs imposed on their victim by the frivolous lawsuit.

The Democrat substitute also imposes complicated mandates on each State's judicial districts, requiring them to ''develop and implement a civil justice expense and delay reduction plan.'' The Democratic substitute requires States to implement these mandates under exceedingly complex requirements that span all the way from pages 10 to page 15 of the Democratic substitute and requires things like ''systematic, differential treatment of civil cases that tailors the level of individualized and case specific management,'' whatever that means. At a minimum, this is overly burdensome, and may be unconstitutional.

The Democratic substitute requires that States ''develop and implement'' these plans when the Supreme Court has held that ''Congress may not simply commandeer the States by directly compelling them to enact and enforce a Federal regulatory program.'' That is in New York v. The United States 1992. That is exactly what the Democratic substitute does without any justification under the Commerce Clause of the Constitution.

The Democratic substitute also completely overrides State laws regarding the sealing of records in all cases, including proceedings in which State laws protect the privacy of sexual abuse victims, including children. And let me repeat this: if the Democratic substitute passes and becomes law, State laws relative to the sealing of court records on sexual abuse cases, including those against minors, can be open to public scrutiny. Shame on you. This blunderbuss provision in the Democratic substitute covers State divorce proceedings, and even all criminal cases, without a showing of why State procedures are inadequate.

The Democratic substitute also retains rule 11's current ''free pass'' provision, which allows lawyers to avoid sanctions for making frivolous claims simply by withdrawing those claims within 21 days after a motion for sanctions has been filed.

Now, let us look at that. A frivolous claim or frivolous filing has been made. You have 21 days after you make it to withdraw it. But meantime, the opposite party has got to go to the legal expense to make the motion to the court to show that the claim is frivolous. And who ends up paying the bill on that? Not the lawyer who filed the frivolous claim, but the defendant and the defendant's lawyers; and that provision actually encourages frivolous lawsuits by allowing unlimited numbers of frivolous pleadings to be filed without penalty. Talk about a loophole big enough to drive the Queen Mary through, that is it.

The Democratic substitute also does not include the bill's essential provisions to prevent the unfair practice of forum shopping.

In short, the Democratic substitute does not provide for three strikes and you are out. It provides for three strikes and you get referred to the State Bar Association that can continue to let the offending attorney practice law. The Democratic substitute even weakens existing law that protects plaintiffs from defendants that file frivolous denials that are not warranted by the evidence and are not reasonably based. The substitute also fails to provide that attorneys' fees be awarded to cover the full costs of responding to a frivolous lawsuit, and the substitute also burdens the States by directly compelling them to enact and enforce a Federal regulatory program. It overrides State procedures governing the confidentiality of documents in the course of legal proceedings. That is more than three strikes against the Democratic substitute, and it should be soundly defeated.

Mr. Speaker, I reserve the balance of my time.

Mr. TURNER of Texas. Mr. Speaker, I yield myself such time as I may consume.

I would remind the distinguished chairman that careful reading of our bill would reveal to him there is no safe harbor allowing any period of days, 21 or otherwise, to withdraw pleadings that may be frivolous. What we have done in our bill is we have amended the statute. We have provided a new statute against frivolous lawsuits; we do not disturb rule 11. We urge him to take a closer look at the bill and what we propose.

I would also suggest to the distinguished chairman that the provision in our bill to protect the public against automatic sealing of certain court records which may be important and contain important information that should be available to the public to protect the public against things like defective products and other things, the decision to seal is one that is in the hands of the court and the sealing must be justified clearly. In the cases of sexual abuse, that sealing is justified. I do not know any judge in the land that would not understand that. And, certainly, I do not see any judge taking the language that we have offered and overturning any State law or issuing any ruling contrary to State law that would not result in the sealing of sexual abuse cases.

The major principal defect in the Republican bill relates to the fact that you are unable to sue a foreign corporation because they attempt to change the law as it presently exists and to make the provision require that you file against a corporation where their principal place of business is. There are many foreign corporations that may be in the United States that do not have their principal place of business here; it is overseas. So the language that has been offered has the effect of denying a plaintiff with a genuine injury, not a frivolous lawsuit, but a genuine, valid lawsuit from being able to sue a foreign corporation.

That provision, perhaps the Republican drafters of their bill did not understand what they were doing with the language they offered, but that is the effect of it; and I think anyone who votes for the Republican bill and says that we are denying an American citizen the opportunity with a legitimate claim to file a suit in the United States against a foreign corporation is casting a vote they will regret.

I also think it is important to point out that the sanctions that are provided in the Democratic substitute are stronger than the provisions in the Republican bill. It is also, I think, important to point out that our sanctions apply to State courts where interstate commerce is involved. Your ''three strikes and you are out'' provision does not apply in State courts, perhaps, again, by drafting error; but it does not apply.

So we think it is very critical that this bill be the one the House adopts.

Mr. Speaker, I yield 5 minutes to the distinguished gentleman from New York (Mr. WEINER).

Mr. WEINER. Mr. Speaker, I thank the gentleman for yielding me this time. It frequently falls upon me as a nonlawyer on the Committee on the Judiciary to try to sort through the facts of these things and try to reduce them into small words that those of us who are nonlawyers can understand. But I was taken by one fact that was articulated by one of my colleagues on the other side that according to a recent survey, 80 percent of the American people are against frivolous lawsuits. I would love to know who the 20 percent are that like frivolous lawsuits so that we can have a focus group with them. They are probably lawyers of some sort, I would imagine.

First, let me just say we rarely have an opportunity to take a look at a proposal before us today and look at almost an identical proposal that was the law of the land between 1983 and 1993. Then, too, there was an effort to unclog the courts of frivolous lawsuits; then, too, the Judicial Conference, not this body, the Judicial Conference said we have to try to come up with some rules.

What was the effect? The effect was not reducing the amount of frivolous lawsuits; it was adding a whole new level of litigation around frivolous lawsuits. Rather than simply having a

judge say, that is frivolous, it is out of here, let us move on with the case, you then had suits and countersuits over whether or not something was frivolous, because it was elevated with the changes that were made in that decade.

We also found that an unintended consequence, and I think even my colleagues acknowledge that it was unintended by their effort, albeit insubstantial, to carve out civil rights suits, we found that when you were bringing a novel, new kind of suit, you found yourself being charged with making a frivolous lawsuit. Civil rights cases is just one of them. We also saw the same thing could have or did happen when you sued tobacco companies to recover for States.

And today, I would dare say that someone who brought a case that is being brought in New York today, suing the country of Saudi Arabia for their culpability in the September 11 attacks, someone could come before a judge and say this is a frivolous lawsuit because it represents no precedent, it has never been tried before and, therefore, should be dismissed.

Obviously, it did not have that effect in that 10 years of clearing out the docket of frivolous lawsuits. If anything, it increased them.

Secondly, we have heard frequently the matrix drawn between frivolous lawsuits, increase of litigation, and insurance rates. I looked at the bill fairly carefully. Nowhere does it require that insurance rates go down, so I will have to assume the same thing will happen upon passage of this bill, although the passage will not happen, because the other body will never take up such a bill, that you will put in the restrictions of average Americans getting into court and then, lo and behold, insurance rates keep going up and up and up, because that is what happened in California, and that is what happened in Florida. So if my colleagues think that by voting for this bill they will be reducing insurance rates, nothing could be further from the truth.

There has been some back-and-forth about this notion of venue shopping: you can only bring an action in the defendant's, not the person who is bringing the case, the defendant's principal place of business. Well, again, I have very talented lawyers on both sides of this, but the Congressional Research Service, the American Law Division, hardly a pantheon of partisanship, hardly the place to go to get the talking points for Fox News or for whoever guys think lies, they write, ''If a defendant's principal place of business was not the United States, then this option could not be exercised in a United States court. Consequently, it would appear that in certain circumstances, a United States citizen or resident injured in this country would not have a judicial forum in the United States in which to seek relief.''

That is what a relatively unbiased analysis of this thing looks like; but even if it is not, what problem are you trying to solve? You should allow Americans to take their cases where they are most appropriate, not where you believe it should be.

Now, let me conclude with this thought. I heard a couple of times on the campaign trail President Bush talked about not having a Washington-based, one-size-fits-all solution for our Nation's problems. There is another way to do this. There is another way. There is a way to look at cases that have individual facts, have individual people, take them before an individual, say a judge; or take those cases before a group of individuals, say six or nine or 12 individual Americans from their community, and allow them to vet the different sides of the argument and allow that to be the decision-making process. It is called the American justice system, and as contemptuous as my colleagues on the other side of the aisle are that you could actually have a judge that has the common sense to make a decision or a jury that has the common sense to make a decision, or whether you can possibly have two lawyers in the adversarial proceeding get the truth out, we here in Washington have to say, this one size fits all.

Well, fortunately, this one size will only be in this one House and will never be the law of this one land.

Mr. SENSENBRENNER. Mr. Speaker, I yield 3 minutes to the gentleman from Texas (Mr. SMITH).

Mr. SMITH of Texas. Mr. Speaker, I thank the chairman for yielding me this time.

Mr. Speaker, anyone who is worried about what frivolous lawsuits will do to them, their family, their friends, or their businesses ought to rush to oppose this Democratic substitute amendment. That is because it is an amendment that will do very little to prevent frivolous lawsuits.

The underlying bill makes several key changes that will deter lawyers from filing frivolous lawsuits. The substitute amendment before us strips all these away.

First, this legislation, the underlying legislation, allows the court to require an individual who files a frivolous lawsuit to pay attorneys' fees incurred as a result of the frivolous lawsuit. This provision obviously makes attorneys think twice before they file such a frivolous lawsuit. However, the Democratic substitute amendment does not include this key provision. In other words, there is no disincentive to file a frivolous lawsuit.

This also means that under the Democratic substitute, small business owners would still suffer from the cost of frivolous lawsuits. Individuals would still suffer because they would see their insurance premiums go up. They would see their health care costs rise. They would still see their reputations damaged, all because of wrongfully filed, frivolous lawsuits.

In other words, Mr. Speaker, this substitute amendment does not provide any relief to those who would get unfairly slapped with a frivolous lawsuit. Those victims would still have to pay their own legal fees.

Next, this substitute claims to have a ''three strikes and you are out'' provision. But if you look at it closely, as the chairman mentioned a while ago, there are no real consequences for the attorney who repeatedly files frivolous lawsuits.

□ 1415

Instead, the substitute merely requires a court to refer the offending attorney to his State bar association; and you can imagine that means that nothing is going to happen.

By contrast, the base bill requires that attorneys who fill frivolous claims face real consequence. Those attorneys can be barred from practicing in that Federal court for a year. That is a real disincentive to file frivolous lawsuits.

Also, the Democratic substitute we are considering now places heavy mandates on States. It requires a new regulatory scheme to deal with ''civil justice expense and delay'' issues. Mr. Speaker, I think that is a very nice but meaningless euphemism for frivolous lawsuits. The requirements would create a new bureaucratic nightmare instead of dealing with the real problem, which is of course frivolous lawsuits.

Finally, Mr. Speaker, the substitute amendment does nothing to address the problem of forum shopping and that is at least half the problem. We simply cannot continue to allow trial attorneys to flock to counties that will award unreasonably high verdicts to any plaintiff who walks in the door. This does too much damage to many Americans and it is, quite frankly, time to put a stop to this type of abuse.

Mr. Speaker, I urge my colleagues to oppose to substitute amendment and vote yes on the underlying bill which would deter lawsuit abuse.

Mr. TURNER of Texas. Mr. Speaker, I yield 2 minutes to the gentleman from Virginia (Mr. SCOTT).

Mr. SCOTT of Virginia. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, there is a significant difference in the civil rights exemption in the underlying bill and this amendment. This amendment is vastly superior because it exempts all civil rights cases, not just those cases that are based on new or evolving law. Many of the cases brought under present laws are treated with hostility. Civil rights cases are often unpopular and some judges do not like to see them.

In fact, the Alliance For Justice had a report on Judge Pickering's hearing and said, ''At his hearing, Judge Pickering was asked about his record of strongly favoring defendants in employment cases. Incredibly, Judge Pickering defended his record by opining that almost no employment discrimination cases that come before the Federal courts have merit.''

Obviously, the problem is made worse when you expand the possibility to State courts, where local judges in some areas may have a civil bias. That is why the civil rights lawyers oppose the underlying bill because they do not want those kind of judges empowered to essentially allow mandatory sanctions to prevent those kind of cases from being brought in the first place.

I would hope that we would adopt the language in the substitute, but we should defeat the bill.

Mr. SENSENBRENNER. Mr. Speaker, I yield 3 minutes to the gentleman from Florida (Mr. KELLER).

Mr. KELLER. Mr. Speaker, I thank the gentleman from Wisconsin (Mr. SENSENBRENNER) for yielding me time.

I rise today in opposition to the Democratic substitute and I will address the three or four strikes and you are out provision of the Democratic substitute. I would like to begin by pointing out what the Democratic White House hopefuls have said about this issue.

Senator JOHN EDWARDS published an article in Newsweek Magazine on December 15, 2003, where he says, ''Frivolous lawsuits waste good people's time and hurt the real victims. Lawyers who bring frivolous cases should face tough mandatory sanctions with a three strikes penalty.''

He also told the Washington Post on May 20, 2003, ''We need to prevent and punish frivolous lawsuits. Lawyers who file frivolous lawsuits should face tough mandatory sanctions. Lawyers who file three frivolous cases should be forbidden to bring another suit for the next 10 years. In other words, three strikes and you are out.''

That is not what the Democratic substitute says. The Democratic substitute only provides that on three strikes the offending attorney will be referred to a bar association and no action need be taken by the bar to discipline the attorney under the substitute. That is not what Senator EDWARDS said. Senator EDWARDS did not say, three strikes and we are going to put a letter in your personnel file. He did not say, three strikes and we will send a diplomat from the U.N. to talk to you. He did not say, three strikes and we will refer this matter to a State bar association where they will not be required to take any disciplinary action.

Could it be that when it comes to cracking down on frivolous lawsuits with a tough three strikes and you are out penalty that the White House presidential candidate were for it before they were against it? Could this be an example of flip-flopping? Do we really have, in fact, two Americas, one America where we see very tough campaign rhetoric about cracking down with mandatory sanctions and a three strikes and you are out penalty and another America where we see watered-down liberal legislation on the floor of Congress?

I think there should be one America, one America where we prevent and punish frivolous lawsuits, not just with words but with actions. I urge my colleagues to vote no on this Democrat substitute.

Mr. TURNER of Texas. Mr. Speaker, how much time remains on each side?

The SPEAKER pro tempore (Mr. LAHOOD). The gentleman from Texas (Mr. TURNER) has 6 minutes remaining. The gentleman from Wisconsin (Mr. SENSENBRENNER) has 7½ minutes remaining.

Mr. TURNER of Texas. Mr. Speaker, I yield 3 minutes to the gentleman from Washington (Mr. INSLEE).

(Mr. INSLEE asked and was given permission to revise and extend his remarks.)

Mr. INSLEE. Mr. Speaker, we do have an honest debate and an honest difference of opinion between the two parties here and it is rather stark.

Democrats believe that if a Japanese car manufactured in Japan, the brakes fail and injured you or your family and it is through negligence of the manufacturer, you ought to be able to have redress in an American court.

The Republicans want to outsource that to the Japanese courts and make you fly to Tokyo to file your lawsuit.

If a German car blows up and burns you and your family to a crisp, Democrats believe you ought to be able to go to the American judicial system and have relief. Republicans believe you should outsource your claims to the German courts. But it gets worse than that.

If a French car fails and injures your family, Democrats believe you should go to an American court and get American justice. Republicans believe you can outsource that even to the French. We do not even have french fries in our cafeteria any more, but you would be happy to send Americans to the French judicial system.

Now, the gentleman from Texas (Mr. SMITH) took issue with what I was saying about this claim, and I want to explain to you why this is.

First, I want to tell you that the Congressional Research Service, the bipartisan, nonpartisan referee of these matters, agrees with exactly what I have said when they said, ''Consequently it would appear that in certain circumstances a United States citizen or resident injured in this country would not have a judicial forum in the United States in which to seek relief.''

The jury is closed and out. The verdict is in. Your policies have outsourced a lot of jobs, but we do not understand why you want to outsource judicial activity for American citizens. Now, why is that?

It is because there is an error apparently in drafting. I do not know if you really intended this but this is what you accomplished, and the reason is even though the statute, and excuse me if I am technical for a moment but this is an important issue. It is Americans' judicial rights. Even where the statute suggests on its face that it would allow an American to sue in any one of three places, where you live or where you are hurt or where the principal place of the business is that hurt you, there is a constitutional principle that says if that corporation does not have a minimal contact where you live or where the injury occurs you cannot sue under the United States Constitution in either one of those circumstances.

That is why the Congressional Research Service, the bipartisan or nonpartisan Congressional Research Service, has concluded that the Republican bill wants to outsource our judicial system to the German, French and Japanese judicial systems. That makes no sense whatsoever, and, frankly, I would invite a response to this as to why you would want to do that.

The Japanese, they build some okay cars, not as good as American cars of course, but their judicial system is not one that we should have to be exposed to in America. Americans should have access to the American judicial system. We should pass this substitute.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, we have debated this issue extensively and the venue for these types of personal injury cases are, one, the district where the plaintiff resides; two, the district where the injury occurred; or three, where the principal place of business of the defendant is located. Any one of these three criteria would trigger the venue.

Now, it is elemental under the corporation law of all 50 States that if a corporation that is incorporated elsewhere and that includes in any one of the other 49 States or in a foreign country, wants to do business in a State, it has to get a certificate of authority and appoint an agent for the service of process. And that is what is done with practically every multinational corporation or interstate corporation that does bills in the United States.

If they do not do that, then they do not have limited liability protection of the corporation law that applies. So the entire argument that is made by the gentleman from Washington (Mr. INSLEE) and the gentleman from Texas (Mr. TURNER) is a complete red herring.

Now, the two gentlemen have quoted extensively from a Congressional Research Service memorandum that was dated today. And it begins, ''This rushed memorandum discusses this issue.'' Well, the CRS is wrong upon occasion. And in yesterday's extension of remarks in the CONGRESSIONAL RECORD, I inserted into the RECORD correspondence that indicated that a similar rushed memorandum of the Congressional Research Service on the Marriage Protection Act was erroneous in nature. Wrong once, maybe wrong again.

Mr. Speaker, I reserve the balance of my time.

Mr. TURNER of Texas. Mr. Speaker, I yield 30 seconds to the gentleman from Washington (Mr. INSLEE).

Mr. INSLEE. Mr. Speaker, I have tremendous respect for the chairman but

in this case the Congressional Research Service is right. Here is where they are right. It is a constitutional principle that a court in Washington, for instance, does not have jurisdiction over a Japanese corporation if they do not have minimal contact with Washington; for instance, if they do not have a retail outlet in Washington. So if a Washington resident is injured by a Japanese car, and they have got an enormous retail outlet down in California but their principal place of business, which is the language you chose in this statute, is in Tokyo, you are out of luck as an American. And I am betting on CRS on this one.

Mr. TURNER of Texas. Mr. Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I am prepared to close if the gentleman from Texas will yield back.

Mr. TURNER of Texas. Mr. Speaker, do I close or does the chairman close?

The SPEAKER pro tempore. The gentleman from Wisconsin (Mr. SENSENBRENNER) has the right to close.

Mr. TURNER of Texas. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, let me say the language regarding the establishment of the forum is very clear in the Republican bill as the gentleman from Washington (Mr. INSLEE) pointed out. It says the suit should be filed where the defendant has its principal place of business.

Now, the distinguished chairman says, well, the law has established that you can sue where somebody is registered to do business and all these foreign corporations have to register to do business.

That is not what the language offered in the Republican bill says. It does not say you can sue a foreign corporation in States where it is registered to do business. It says where its principal place of business is located, and many foreign corporations have no principal place.

I would suggest to the gentleman who offered up the quote of Senator EDWARDS, we agree with Senator EDWARDS. We should ban frivolous lawsuits, and the bill that we have offered does it more forcefully and effectively than the Republican bill does. At the end of the third strike under the Republican bill you can be barred in practicing law in that court. You are suspended. Under our bill, the third strike, you are referred to your State bar association for disciplinary proceedings, to include possible disbarment.

Now, under your bill a lawyer from New York can come down to east Texas and file a lawsuit and if it is frivolous then he gets barred from ever practicing law in the Eastern District of Texas again.

What good is that going to do for a New York lawyer who may never come back to east Texas anyway? What good will it do to say you cannot come to east Texas? Even if he has to come back he can send a law partner and let him file the frivolous lawsuit again.

If you want to get a lawyer's attention, you refer them to the State disciplinary board that governs their right to practice law in that State.

□ 1430

I practiced law for many years, and anytime a lawyer gets referred to the State bar association for disciplinary action, it is a serious thing. If a lawyer continues to file frivolous lawsuits, they should be disbarred; and then we would not have to worry about them running to another court to file another frivolous lawsuit where they had not already filed one before. They would not be practicing law.

So I would suggest, if my colleagues really want to get tough on frivolous lawsuits, they will support the Democratic substitute, and if they want to be sure that an American citizen who is injured in America has the right to sue a foreign corporation that was the perpetrator of a tortious act, they better vote against the Republican bill and vote for the substitute.

I know the gentleman from Wisconsin (Mr. SENSENBRENNER) did not intend for that to be the effect, but that is the effect of the language that he has offered up today; and I would suggest that any Member on either side of the aisle would be well advised to vote against his bill to ensure that that does not occur to an American citizen who would be denied the right to file a lawsuit against a foreign corporation.

Mr. Speaker, I yield back the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself the balance of the time.

Mr. Speaker, the JOHN KERRY for President campaign has endorsed national legislation in which ''lawyers who file frivolous cases would face tough, mandatory sanctions, including a 'three strikes and you're out' provision that forbids lawyers who file three frivolous cases from bringing another suit for the next 10 years.''

Unfortunately, the Democratic substitute did not listen to what the Kerry campaign said and does not forbid lawyers who file three or more frivolous lawsuits from bringing future lawsuits. The substitute only provides that on three strikes the offending attorney will be referred to a bar association, and no action need be taken by the bar to discipline the lawyer.

The base bill, H.R. 4571, on the other hand, currently provides that an attorney who files frivolous lawsuits will be suspended for at least a year and perhaps much longer if the court deems it appropriate.

I would ask all Members to reject the Democratic substitute. This quote that I have given from the Kerry for President campaign and those that the gentleman from Florida (Mr. KELLER) has quoted of Senator EDWARDS in Newsweek magazine of last December, the Republican bill has got the type of bipartisan support that is needed to deal with this problem.

I would urge a ''no'' vote on the substitute and passage of the base bill.

Mr. DELAHUNT. Mr. Speaker, I am profoundly concerned about the erosion of the independence and statehood role in our judicial system. This bill is just another attack on access to the courts, and the latest attempt to override existing State laws. At this rate, we will have a justice system available only to corporate America. Litigation costs already make the courts unavailable for the average person and small business. This bill takes our country further in the wrong direction.

This bill will not ''take back the courts'' for plaintiffs. To the contrary, Congress continues to block access to justice. Imagine a system that leaves the tobacco industry unchecked. Imagine the number of unnecessary deaths if the trial bar could not keep unsafe tires off our cars. Or a justice system that fails to uncover contamination of public water supplies. We need the private sector. The trial bar plays an important role in the protection of American consumers. Yet, I dare say, we are going in the wrong direction.

In another all-too-familiar pattern for this Congress, this bill is another court-stripping measure limiting judicial discretion. From civil rights claims to constitutional challenges, this Congress strips courts of their ability to hear cases. Congress—not a judge sitting in a courtroom—wants to decide if a case is meritorious. Congress—not a judge—will establish inflexible guidelines and impose mandatory sanctions for lawyers. Congress is trying to micromanage the judicial system as well as state judiciaries.

We talk a lot in this Chamber about respecting States' rights. Yet, this bill represents an unprecedented invasion into the traditional jurisdiction of State courts. This unwarranted intrusion into States' rights is wrong. States should be able to set their own rules for the game, including those governing the professional conduct of lawyers. Let's not waste any more time undermining the principles of federalism on a piecemeal basis. Why not simply abolish the 10th Amendment? The bill's sponsors claim an agenda of reform—this is not reform. This is about reeling in the wrong direction.

For all these reasons, I urge my colleagues to reject H.R. 4571 and support the Democratic substitute offered by my colleague from Texas.

The SPEAKER pro tempore (Mr. LAHOOD). All time for debate has expired.

Pursuant to House Resolution 766, the previous question is ordered on the bill, as amended, and on the further amendment by the gentleman from Texas (Mr. TURNER).

The question is on the amendment in the nature of a substitute offered by the gentleman from Texas (Mr. TURNER).

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. TURNER of Texas. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 177, nays 226, not voting 30, as follows:

[Roll No. 448]

YEAS—177

Abercrombie	Harman	Neal (MA)
Baca	Herseth	Oberstar
Baird	Hill	Obey
Baldwin	Hinchey	Olver
Becerra	Hinojosa	Ortiz
Bell	Hoeffel	Pallone
Berkley	Holden	Pascrell
Berry	Holt	Pastor
Bishop (GA)	Honda	Payne
Bishop (NY)	Hooley (OR)	Pelosi
Blumenauer	Hoyer	Peterson (MN)
Boswell	Inslee	Pomeroy
Boucher	Israel	Price (NC)
Boyd	Jackson (IL)	Rahall
Brady (PA)	Jackson-Lee (TX)	Rangel
Brown (OH)	Jefferson	Reyes
Brown, Corrine	John	Rodriguez
Butterfield	Johnson (IL)	Ross
Capps	Jones (OH)	Rothman
Capuano	Kanjorski	Roybal-Allard
Cardin	Kaptur	Ruppersberger
Cardoza	Kildee	Rush
Carson (IN)	Kilpatrick	Ryan (OH)
Carson (OK)	Kind	Sabo
Case	Kucinich	Sánchez, Linda T.
Chandler	Lampson	Sanchez, Loretta
Clay	Lantos	Sanders
Clyburn	Larsen (WA)	Sandlin
Cooper	Larson (CT)	Schakowsky
Cummings	Lee	Schiff
Davis (AL)	Levin	Scott (GA)
Davis (CA)	Lewis (GA)	Scott (VA)
Davis (FL)	Lipinski	Sherman
Davis (IL)	Lowey	Skelton
DeFazio	Lynch	Smith (WA)
DeGette	Majette	Solis
Delahunt	Maloney	Spratt
DeLauro	Matsui	Stark
Deutsch	McCarthy (MO)	Strickland
Dicks	McCarthy (NY)	Stupak
Dingell	McCollum	Tanner
Dooley (CA)	McDermott	Tauscher
Doyle	McGovern	Thompson (CA)
Duncan	McIntyre	Thompson (MS)
Edwards	McNulty	Tierney
Emanuel	Meehan	Turner (TX)
Eshoo	Meek (FL)	Udall (CO)
Etheridge	Meeks (NY)	Udall (NM)
Evans	Menendez	Van Hollen
Farr	Michaud	Visclosky
Fattah	Millender-McDonald	Waters
Filner	Miller (NC)	Watson
Ford	Miller, George	Watt
Frank (MA)	Moore	Waxman
Frost	Moran (VA)	Weiner
Gonzalez	Murtha	Wexler
Gordon	Nadler	Woolsey
Green (TX)	Napolitano	Wu
Grijalva	Neal (MA)	Wynn
Gutierrez		

NAYS—226

Aderholt	Capito	Flake
Akin	Carter	Foley
Alexander	Castle	Forbes
Allen	Chabot	Fossella
Andrews	Chocola	Franks (AZ)
Bachus	Coble	Frelinghuysen
Baker	Cole	Gallegly
Barrett (SC)	Collins	Garrett (NJ)
Bartlett (MD)	Costello	Gerlach
Barton (TX)	Cox	Gibbons
Bass	Cramer	Gilchrest
Beauprez	Crane	Gillmor
Berman	Crenshaw	Gingrey
Biggert	Cubin	Goode
Bilirakis	Culberson	Goodlatte
Bishop (UT)	Cunningham	Granger
Blunt	Davis (TN)	Graves
Boehner	Davis, Jo Ann	Green (WI)
Bonilla	Davis, Tom	Gutknecht
Bono	Deal (GA)	Hall
Boozman	DeLay	Harris
Bradley (NH)	DeMint	Hart
Brady (TX)	Diaz-Balart, L.	Hastings (WA)
Brown (SC)	Diaz-Balart, M.	Hayes
Brown-Waite, Ginny	Doggett	Hayworth
Burgess	Doolittle	Hefley
Burns	Dreier	Hensarling
Burr	Dunn	Herger
Burton (IN)	Ehlers	Hobson
Buyer	Emerson	Hoekstra
Calvert	English	Hostettler
Camp	Everett	Houghton
Cantor	Feeney	Hulshof
	Ferguson	Hunter
	Flake	Myrick
	Foley	Nethercutt
	Forbes	Neugebauer
	Fossella	Ney
	Franks (AZ)	Northup
	Frelinghuysen	Norwood
	Gallegly	Nunes
	Garrett (NJ)	Nussle
	Gerlach	Osborne
	Gibbons	Ose
	Gilchrest	Otter
	Gillmor	Oxley
	Gingrey	Paul
	Goode	Pearce
	Goodlatte	Pence
	Granger	Peterson (PA)
	Graves	Petri
	Green (WI)	Pickering
	Gutknecht	Pitts
	Hall	Platts
	Harris	Pombo
	Hart	Porter
	Hastings (WA)	Portman
	Hayes	Pryce (OH)
	Hayworth	Putnam
	Hefley	Quinn
	Hensarling	Ramstad
	Herger	Regula
	Hobson	Rehberg
	Hoekstra	Renzi
	Hostettler	Reynolds
	Houghton	Rogers (AL)
	Hulshof	Rogers (KY)
	Hunter	Rogers (MI)
	Hyde	Rohrabacher
	Isakson	Ros-Lehtinen
	Issa	Royce
	Jenkins	Ryan (WI)
	Johnson (CT)	Ryun (KS)
	Johnson, Sam	Saxton
	Jones (NC)	Sensenbrenner
	Keller	Sessions
	Kelly	Shadegg
	Kennedy (MN)	Shaw
	King (IA)	Shays
	King (NY)	Sherwood
	Kingston	Shimkus
	Kirk	Shuster
	Kline	Simmons
	Knollenberg	Simpson
	Kolbe	Smith (MI)
	LaHood	Smith (NJ)
	Latham	Smith (TX)
	LaTourette	Snyder
	Leach	Souder
	Lewis (CA)	Stearns
	Lewis (KY)	Stenholm
	Linder	Sullivan
	LoBiondo	Sweeney
	Lofgren	Tancredo
	Lucas (KY)	Taylor (MS)
	Lucas (OK)	Taylor (NC)
	Manzullo	Terry
	Markey	Thomas
	Matheson	Thornberry
	McCotter	Tiahrt
	McCrery	Tiberi
	McHugh	Toomey
	McKeon	Turner (OH)
	Mica	Upton
	Miller (MI)	Vitter
	Miller, Gary	Walden (OR)
	Mollohan	Walsh
	Moran (KS)	Wamp
	Murphy	Weldon (FL)
	Musgrave	Weldon (PA)
		Weller
		Wicker
		Wilson (NM)
		Wilson (SC)
		Wolf
		Young (AK)
		Young (FL)

NOT VOTING—30

Ackerman	Goss	Miller (FL)
Ballenger	Greenwood	Owens
Blackburn	Hastings (FL)	Radanovich
Boehlert	Istook	Schrock
Bonner	Johnson, E. B.	Serrano
Cannon	Kennedy (RI)	Slaughter
Conyers	Kleczka	Tauzin
Crowley	Langevin	Towns
Engel	Marshall	Velázquez
Gephardt	McInnis	Whitfield

□ 1457

Mrs. KELLY, Mr. GINGREY and Mr. GARRETT of New Jersey changed their vote from ''yea'' to ''nay.''

Messrs. CARDOZA, DINGELL and CUMMINGS changed their vote from ''nay'' to ''yea.''

So the amendment in the nature of a substitute was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. LAHOOD). The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MS. DELAURO

Ms. DELAURO. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentlewoman opposed to the bill?

Ms. DELAURO. I am opposed to the bill in its current form, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion.

The Clerk read as follows:

Ms. DeLauro moves to recommit the bill H.R. 4571 to the Committee on the Judiciary with instructions to report the same back to the House forth with with the following amendment:

Section 4, insert at the end the following new subsection:

(e) NOT APPLICABLE TO BENEDICT ARNOLD CORPORATIONS.—

(1) IN GENERAL.—To the extent the defendant is a Benedict Arnold corporation, this section does not apply, notwithstanding subsection (d).

(2) DEFINITIONS.—For purposes of this subsection:

(A) The term ''Benedict Arnold corporation'' means a foreign corporation that acquires a domestic corporation in a corporate repatriation transaction.

(B) The term ''corporate repatriation transaction'' means any transaction in which—

(i) a foreign corporation acquires substantially all of the properties held by a domestic corporation;

(ii) shareholders of the domestic corporation, upon such acquisition, are the beneficial owners of securities in the foreign corporation that are entitled to 50 percent or more of the votes on any issue requiring shareholder approval; and

(iii) the foreign corporation does not have substantial business activities (when compared to the total business activities of the corporate affiliated group) in the foreign country in which the foreign corporation is organized.

Ms. DELAURO (during the reading). Mr. Speaker, I ask unanimous consent that the motion to recommit be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Connecticut?

There was no objection.

The SPEAKER pro tempore. The gentlewoman from Connecticut (Ms. DELAURO) is recognized for 5 minutes in support of her motion to recommit.

Ms. DELAURO. Mr. Speaker, this motion to recommit is designed to help address the problem of domestic corporations reincorporating abroad for the express purpose of avoiding new U.S. taxes and now new legal liability.

As we fight terrorism at home and abroad, when we have hundreds of thousands of troops in harm's way and are trying to find the resources to equip our first responders and ensure the safety of our ports and air transit, the last thing we should be doing is passing legislation that helps what are essentially corporate tax dodgers.

With increasing frequency, companies are setting up shell corporations in places like Bermuda while continuing to be owned by U.S. shareholders and doing business in the United States. The only difference is that this new so-called foreign company escapes substantial tax liability. What these companies have done is a slap in the face of every company which has chosen to stay in America and of every citizen who faithfully pays their taxes.

In my State of Connecticut, Stanley Works once considered incorporating in Bermuda to keep up with their competitors who had already moved overseas. But they changed their mind. They did the right thing.

But the bill before us provides a litigation and financial windfall to corporate expatriates at the expense of companies like Stanley Works. Instead of permitting claims to be filed wherever a corporation does business, or has

minimum contacts, this bill requires the suit to be brought where the defendant's principal place of business is located. Perhaps that makes some sort of sense in the abstract, but in the case of a corporate expatriate what that means is that in most cases claims could only be filed in places like Bermuda under their liability laws.

It is bad enough that these companies are essentially cheating on their taxes by arguing, rather unconvincingly, that they are not American companies. But for them to use this rationale to escape liability is outrageous. This is unfair to the victims, and unfair to the domestic company who would be forced to compete against these companies.

□ 1500

The Congressional Research Service has analyzed this bill and wrote: ''In certain circumstances a United States citizen injured in this country would not have the judicial forum in the United States in which to seek relief.'' In other words, in certain cases, American citizens would have no judicial recourse whatsoever.

These are American companies flouting American tax law. They do business here in the United States, and they should be subject to our laws, period. So my motion to recommit amends the underlying bill to say the new limitations on jurisdiction and venue do not apply to a corporate expatriate company. This is a modest, commonsense change to address the irresponsible actions of a handful of companies. It is time for these companies to live up to their obligations as American corporate citizens. I urge my colleagues to vote ''yes'' on this motion to recommit.

Mr. Speaker, I yield 1 minute to the gentleman from Washington (Mr. INSLEE).

(Mr. INSLEE asked and was given permission to revise and extend his remarks.)

Mr. INSLEE. Mr. Speaker, we have a delicious debate before us because we Democrats believe if Stanley Tool tries to avoid taxes by moving to Bermuda and their tool blows up and puts out your eye, an American ought to have access to the American judicial system in front of an American jury.

The Republicans want to outsource the job to Bermuda. If a corporation goes to France and a product blows up and hurts you, we Democrats believe Americans ought to have access to the Americans judicial system. The Republicans want to outsource the jury system to Paris. We do not even have French fries in our cafeteria anymore, and the other side is outsourcing our jobs to France. The same applies to Germany and every other country. The other side has outsourced enough jobs; we are not going to allow the outsourcing of our jury system, too. Support this motion.

Ms. DELAURO. Mr. Speaker, I urge my colleagues to support this motion to recommit, and I want to thank the gentlewoman from Texas (Ms. JACKSON-LEE), who is a member of the Committee on the Judiciary who was going to offer this motion in committee.

Mr. SENSENBRENNER. Mr. Speaker, I rise in opposition to the motion to recommit.

The SPEAKER pro tempore (Mr. LAHOOD). The gentleman from Wisconsin (Mr. SENSENBRENNER) is recognized for 5 minutes.

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 4571.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, the real outsourcing motion is the one which has been made by the gentlewoman from Connecticut (Ms. DELAURO). If this motion is adopted and this bill is enacted into law, it will cost American jobs. Anytime the cost of doing business in the United States goes up, the number of Americans with jobs will go down. This motion to recommit would increase the cost of doing business in this country and in the process lose American jobs.

I do not want to hear anybody who has argued in favor of this motion ever to come back and complain about the outsourcing of American jobs to foreign countries if this motion passes because this is the type of thing that will absolutely do that.

The motion to recommit defines the covered entities as those that have substantial business activities in this country, and hurting substantial business in American substantially hurts American workers. Stand up for American workers; vote down this motion to recommit. Stop the outsourcing of jobs by last-minute motions made on the floor with red herring arguments. Vote ''no'' on the motion to recommit.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Ms. DELAURO. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. Pursuant to clause 9 of rule XX, the Chair will reduce to 5 minutes the minimum period of time for any electronic vote on the question of passage of the bill.

The vote was taken by electronic device, and there were—ayes 196, noes 211, not voting 26, as follows:

[Roll No. 449]

AYES—196

Abercrombie
Allen
Andrews
Baca
Baird
Baldwin
Becerra
Bell
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boswell
Boucher
Boyd
Brady (PA)
Brown (OH)
Brown, Corrine
Butterfield
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Case
Chandler
Clay
Clyburn
Cooper
Costello
Cramer
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Dooley (CA)
Doyle
Duncan
Edwards
Emanuel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Frost
Gonzalez
Goode
Gordon
Green (TX)
Grijalva
Gutierrez
Harman
Herseth
Hill
Hinchey
Hinojosa
Hoeffel
Holden
Holt
Honda
Hooley (OR)
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson (IL)
Jones (OH)
Kanjorski
Kaptur
Kildee
Kilpatrick
Kind
Kucinich
Lampson
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Lucas (KY)
Lynch
Majette
Maloney
Markey
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Northup
Oberstar
Obey
Olver
Ortiz
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rodriguez
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Schakowsky
Schiff
Scott (GA)
Scott (VA)
Sherman
Skelton
Smith (WA)
Snyder
Solis
Spratt
Stark
Stenholm
Strickland
Stupak
Tanner
Tauscher
Taylor (MS)
Taylor (NC)
Thompson (CA)
Thompson (MS)
Tierney
Turner (TX)
Udall (CO)
Udall (NM)
Van Hollen
Visclosky
Waters
Watson
Watt
Waxman
Weiner
Wexler
Wilson (NM)
Woolsey
Wu
Wynn

NOES—211

Aderholt
Akin
Alexander
Bachus
Baker
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Biggert
Bilirakis
Bishop (UT)
Blunt
Boehner
Bonilla
Bono
Boozman
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cantor
Capito
Carter
Castle
Chabot
Chocola
Coble
Cole
Collins
Cox
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
DeMint
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Dreier
Dunn
Ehlers
Emerson
English
Everett
Feeney
Ferguson
Flake
Foley
Forbes
Fossella
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Goodlatte
Goss
Granger
Graves
Green (WI)
Greenwood
Gutknecht

Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
Johnson (CT)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (OK)
Manzullo
McCotter
McCrery
McHugh
McKeon
Mica
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Norwood
Nunes
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pearce
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Porter
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Sullivan
Sweeney
Tancredo
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Wicker
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—26

Ackerman
Ballenger
Blackburn
Boehlert
Bonner
Cannon
Conyers
Crowley
Engel
Gephardt
Hastings (FL)
Johnson, E. B.
Kennedy (RI)
Kleczka
Langevin
Marshall
McInnis
Miller (FL)
Owens
Schrock
Serrano
Slaughter
Tauzin
Towns
Velázquez
Whitfield

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. LAHOOD) (during the vote). Members are advised that 2 minutes remain to vote.

□ 1525

Mr. SMITH of New Jersey changed his vote from ''aye'' to ''no.''

Mr. CARSON of Oklahoma, Mr. TAYLOR of North Carolina and Mrs. NORTHUP changed their vote from ''no'' to ''aye.''

So the motion was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. SENSENBRENNER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 229, nays 174, not voting 30, as follows:

[Roll No. 450]

YEAS—229

Aderholt
Akin
Alexander
Bachus
Baker
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Biggert
Bilirakis
Bishop (UT)
Blunt
Boehner
Bonilla
Bono
Boozman
Boyd
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cantor
Capito
Cardoza
Carson (OK)
Carter
Case
Castle
Chabot
Chocola
Coble
Cole
Collins
Cox
Cramer
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
DeMint
Diaz-Balart, M.
Dreier
Duncan
Dunn
Edwards
Ehlers
Emerson
English
Everett
Feeney
Ferguson
Flake
Foley
Forbes
Fossella
Franks (AZ)
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Goode
Goodlatte
Goss
Granger
Graves
Green (WI)
Greenwood
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Holden
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
Kingston
Kirk
Kline
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
Matheson
McCotter
McCrery
McHugh
McKeon
Mica
Miller (MI)
Miller, Gary
Moran (KS)
Moran (VA)
Murphy
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Porter
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Scott (GA)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Stenholm
Sullivan
Sweeney
Tancredo
Tanner
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NAYS—174

Abercrombie
Allen
Andrews
Baca
Baird
Baldwin
Becerra
Bell
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boswell
Boucher
Brady (PA)
Brown (OH)
Brown, Corrine
Butterfield
Capps
Capuano
Cardin
Carson (IN)
Chandler
Clay
Clyburn
Cooper
Costello
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Diaz-Balart, L.
Dicks
Dingell
Doggett
Dooley (CA)
Doolittle
Doyle
Emanuel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Frost
Gonzalez
Green (TX)
Grijalva
Gutierrez
Harman
Herseth
Hill
Hinchey
Hinojosa
Hoeffel
Holt
Honda
Hooley (OR)
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jones (OH)
Kanjorski
Kaptur
Kildee
Kilpatrick
Kind
King (NY)
Kucinich
Lampson
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Lynch
Majette
Maloney
Markey
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Pallone
Pascrell
Pastor
Payne
Pelosi
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rodriguez
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sandlin
Schakowsky
Schiff
Scott (VA)
Sherman
Skelton
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tauscher
Thompson (CA)
Thompson (MS)
Tierney
Turner (TX)
Udall (CO)
Udall (NM)
Van Hollen
Visclosky
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOT VOTING—30

Ackerman
Ballenger
Blackburn
Boehlert
Bonner
Cannon
Conyers
Crowley
Engel
Frelinghuysen
Gephardt
Gordon
Hastings (FL)
John
Johnson, E. B.
Kennedy (RI)
Kleczka
Langevin
Marshall
McInnis
Miller (FL)
Owens
Sanders
Schrock
Serrano
Slaughter
Tauzin
Towns
Velázquez
Whitfield

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members are advised that 2 minutes remain to vote.

□ 1535

Mr. SANDLIN and Mr. BISHOP of New York changed their vote from ''yea'' to ''nay.''

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. KENNEDY of Rhode Island. Mr. Speaker, on the evening of September 13 and the morning of September 14, I was attending the funeral services of the Richard Langevin, the father of our colleague Congressman JAMES LANGEVIN, and was unable to vote on rollcall votes Nos. 441–450.

I respectfully request the opportunity to record my position on rollcall votes Nos. 441, 442, 443, 444, 445, 446, 447, 448, 449, 450.

It was my intention to vote ''aye'' on rollcall vote No. 441, ''aye'' on rollcall vote No. 442, ''aye'' on rollcall vote No. 443, ''no'' on rollcall vote No. 444, ''no'' on rollcall vote No. 445, ''aye'' on rollcall vote No. 446, ''aye'' on rollcall vote No. 447, ''aye'' on rollcall vote No. 448, ''aye'' on rollcall vote No. 449, and ''no'' on rollcall vote No. 450.